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THE JURIST.

LONDON, JANUARY 9, 1864.

THE stat. 26 & 27 Vict. c. 122, enabling the Crown to make a redistribution of the circuits of the judges, has been put in force. By an Order of the Queen in Council, bearing date the 11th December, 1863, the county of York and the county of the city of York, have been taken from the Northern Circuit and annexed to the Midland Circuit; while the counties of Leicester, Rutland, and Northampton, have been taken from the latter and added to the Norfolk Circuit; and, as a necessary companion to these alterations, by another Order in Council of the same date, the number of revising barristers for the Northern Circuit, which, by the Registration of Voters Act, 6 & 7 Vict. c. 18, s. 28, was fixed at fifteen, has been reduced by six, while the number on the Midland and Norfolk Circuits have been raised respectively from eleven to fourteen, and from eight to eleven. Whether these changes are to be the *sole* fruits of the 26 & 27 Vict. c. 122, remains to be seen; in any event we hail them as a salutary act of justice to the community, which has been only too long delayed.

The kingdom of England is divided into six circuits, and the most superficial glance at the map will shew how extremely unequal was the division. The Northern Circuit comprised the six counties of York, Durham, Northumberland, Cumberland, Westmoreland, and Lancaster, covering a space of more than one-fourth part of the kingdom, and containing, according to the census of 1861, a population of about five millions and a half.

Taking, according to the same census, the population of England at nineteen millions (strictly 18,954,444), we shall see that the population of the Northern Circuit includes between one-third and one-fourth of the whole, leaving about thirteen millions for the *five* other circuits, and the densely peopled metropolitan county. And not only did the Northern Circuit cover this enormous expanse of country, and boast a large agricultural population, but within its ambit were situated some of the richest and most populous manufacturing towns in the kingdom—Manchester, Sheffield, Leeds, Bradford, Halifax, Huddersfield, Blackburn, Rochdale, &c., and though last, not least, Liverpool, the *assizes* at which teem with mercantile causes of the greatest weight, importance, and difficulty. To *despatch* (for no other expression seems adequate to the occasion) the business of this enormous circuit, and that, too, within a limited time, *two* judges were sent, while as many were allowed to each of the other circuits; including, among the rest, the Midland, containing the counties of Derby, Leicester, Lincoln, Northampton, Nottingham, and Warwick; and the Norfolk, containing those of Cambridge, Huntingdon, Norfolk, Suffolk, and Bedford. Nor was this all. In choosing the circuits, the Northern Circuit generally fell to the lot of the junior judges, who were compelled to take whatever circuit was left unappropriated by their seniors. Now, it is certain, that in the occupation

of a judge, be the knowledge, talent, patience, or integrity of the individual what they may, the old rule, "practice makes perfect," holds true,—no junior judges can be expected to get through the business of a circuit as effectively as those whom experience has rendered expert in it. We have not the least doubt, that owing to all the above-mentioned causes, the business on the Northern Circuit was not dealt with as it ought to have been, and that, without meaning to cast the slightest imputation on the learned and able judges who have presided upon it, very much injustice must have been done there every year—not so much, perhaps, in the shape of positive misdecision, as from the desire to get through causes, trying them only half, i. e. after having heard only a portion of the evidence, directing in haste a verdict for one party or the other, with leave reserved to the loser to move the Court above to set it aside. On coming before that Court, it is discovered, what, allowing twenty minutes more time at the assizes would have shewn, that the real question between the parties was not reached; and consequently the party against whom the verdict was given must either submit to injustice, or incur the risk and expense of a new trial.

We must not, however, dissemble from ourselves, that while these salutary changes will greatly benefit the public, as well as the fortunes of individual members of the profession, they will be productive of loss and inconvenience to other members of it. For this, however, there is no remedy. It is the necessary incident of all change to produce partial evil, which must be disregarded when the effect of the change is to produce general good; and the opposing reforms, on the ground of the partial evil they thus inevitably produce, would be to shut the door for all time against every species of improvement.

MILITARY LAW.

It has been said of slavery, that its presence is ever more deleterious and corrupting to the masters than the slaves: that the effect of such absolute power is more ruinous to the character of its possessors than of its victims. Recent disclosures lead us to think that something of this kind, differing, we admit, greatly in degree, may be predicated of the possession of military authority.

Those of our readers who have had sufficient curiosity and diligence to follow the slow length of the Crawley court-martial, will have little difficulty in discovering the occasion of these remarks. That court-martial is over, and it has proved, as indeed it must have been, from the moment that the "articles of accusation" were published, evident that it would prove a failure and a sham. We do not mean by this to find any fault with the finding of the court; on the contrary, we are clearly of opinion that no other conclusion could have been arrived at on the evidence; but our complaint is one of which we trust the country has not yet heard the last; it is this—that the real question to which the country demanded a reply, was, studiously or inadvertently, at any rate effec-

tually, withdrawn from the consideration of the court. The court was required to decide—first, whether Colonel Crawley had or had not treated the deceased sergeant-major with wilful and improper harshness during his arrest; and, secondly, whether he had or had not falsely attempted to shift the blame of such harshness from his own shoulders to those of a subordinate; and those questions they, necessarily, as we think, answered in the negative: but what the public desired to know involved much higher and more important considerations, namely, whether a man, known to be innocent, whose innocence his accusers did not dare to question in the only legitimate way, by bringing him to trial, had or had not, nevertheless, for sinister motives, connected with the trial of another, been deliberately retained in an unjust imprisonment, the effect of which had been to cause his death; and if so, who was responsible for the crime; and to these questions the late court-martial did not, and from its constitution could not return any answer.

But although the issue which alone was of sufficient importance to justify the popular excitement was thus excluded, and much evidence directly bearing thereon has, doubtless, been lost, there has been incidentally revealed, in the course of this remarkable trial, enough to fill with wonder and dismay the minds of all who have any true love for the principles of personal liberty. We do not, and will not, believe that there is a civilian in the land who read the letter of the 6th May, 1862, which was published in the course of these proceedings, without a thrill of horror and astonishment; horror, that such things could take place under British rule, and astonishment, that such an officer of character and distinction, who has been deservedly advanced by her Majesty to a place of high power and trust, could have been so blinded to the plainest principles of natural justice, as to write or sanction so extraordinary an order.

That there may be no mistake regarding the terms of the letter in question, we give it in extenso:—

"Deputy Adjutant-General's Office, Head Quarters, Mahabeshwur.

"May 6, 1862.

"From the Deputy Adjutant-General, Her Majesty's British Forces, to Major-General Farrell, commanding Mhow Division.

"Sir,—The inclosed, No. 1374, has been carefully dictated by the Commander-in-Chief, on the assumption that no further matter has transpired against the non-commissioned officers concerned. If, however, they have been summoned in Captain Smales's defence, and Lieutenant-Colonel Crawley is of opinion that a charge of perjury can be established against any of them, or of conspiring in any manner, a further reference should be made, and the inclosed letter should not be communicated. His Excellency observes, that the best plan will be to send for Lieutenant-Colonel Crawley, and beg him to read the inclosed very carefully, and then to say, if other circumstances have transpired rendering the communication of the inclosed inexpedient. His Excellency is most anxious to support the discipline of the regi-

ment, and its commanding officer's authority; but to insure that, it is absolutely necessary that no prosecution should be instituted in this matter, of which there may be a chance of failure. If the non-commissioned officers are released, as proposed by his Excellency, Sir William Mansfield would recommend Lieutenant-Colonel Crawley to make a short but very kind address to them, and to point out, that if any of them had felt hurt, and more especially the regimental sergeant-major, their right way of proceeding would have been, to have requested to be allowed to speak to him on the subject—a request which, his Excellency is convinced, would not have been made in vain. In conclusion, *I am to request that the sergeant-majors concerned are not to be released from arrest, or the inclosed letter acted upon, until the proceedings in the trial of Captain Smales are entirely closed, and the court, of which Lieutenant-Colonel Payne is president, has been finally adjourned.*

"I have the honour to be, Sir,

"Your obedient servant,

"FREDERICK THESIGER, Lieut.-Col.

"Acting D. A.-G., Her Majesty's British Forces."

The inclosure referred to in this letter is also a letter addressed by Colonel Thesiger, as acting Deputy Adjutant-General, to General Farrell, and it opens with this plain admission:—"I am desired by the Commander-in-Chief to remark, that there does not appear, as shewn by these documents, to be any sufficient grounds for bringing the non-commissioned officers concerned to trial for conspiracy."

The whole letter will be found in *The Times* of the 19th November, 1863.

Now, taking these two letters together, and recollecting that the inclosure may be looked upon as an order from the Commander-in-Chief, and the letter in which it was inclosed, as secret instructions with regard thereto, they appear to us to be capable of but one construction. "The men," says Sir William Mansfield, or Colonel Thesiger as his deputy, "are innocent; you must not attempt to prove them guilty, for you will certainly fail; but for all that, you must not set them at liberty, for fear that the result of your doing so would be to affect the decision about to be pronounced on a third party."

What would be said if we had next week to report that the magistrates in petty sessions in some country village, when certain persons, "known to the police," had been brought before them on a charge of some crime, unsupported by any sufficient evidence, had said to the constable, "There is clearly no evidence against these men, and we cannot possibly commit them for trial; but for all that you must not discharge them till after John Smith, who has been already sent up for trial at the next assizes, has been tried, and the judges have left the county?"

Does any one doubt that the magistrates in question would be removed from the commission? If one of the prisoners were to die under circumstances which led to the suspicion that his death had been caused, or hastened, by the illegal imprisonment, is there any doubt that the magistrates, and the constables who

obeyed their orders, would be liable to indictment for manslaughter?

But then, it will be said, the exigences of military law justify many things which would admittedly be indefensible among civilians. That may be so; but what we desired to learn from the court-martial on Colonel Crawley was, whether, according to existing military law and usage, this particular instance comes within that rule; and on this point we are left in our former ignorance.

If the law under which our soldiery live does not sanction the deliberate imprisonment of innocent men for collateral purposes, then we will not trust ourselves to express our opinion of the conduct of Sir William Mansfield, and those who acquiesced in his orders in this matter. If it does sanction such conduct, then we have no hesitation in saying, that the existence of such a law is a disgrace to a civilised community, and a Christian land, and is abhorrent to the feelings and principles of a free and liberty-loving nation.

We admit that it is necessary for the due maintenance of military discipline that many things should be criminal in a soldier which would be innocent in a civilian; that he should be subjected to a class of restraints from which others have been emancipated on leaving school, and be liable to be punished for actions which in others would be rather meritorious than the contrary. But however minute may be the regulations to which the soldier is subjected, however stringent the law by which he is to be judged, the plainest principles of reason and justice demand, that if he conform to all these regulations, and keep himself within the commands of that law, he shall not be liable, without a crime, to imprisonment at the arbitrary will of a third person—an imprisonment which, if legal for one day longer than is necessary for the purpose of duly bringing the case to trial, may be indefinitely prolonged, and which, therefore, involves the exercise of an authority not formally claimed, since the fall of the Bastille, even by the most despotic sovereigns. Granted that the ex-King of Naples and his father in practice exercised such a power—granted that something of the kind has been known to take place in Poland—the precedents are hardly such as we should readily consent to follow; and even then we do not know that it was ever avowed that the prisoners were to be detained without trial and conviction.

We do not think it necessary to discuss the question, whether, supposing Sir William Mansfield's order to have been illegal, when judged by military law, the fact that such an order had been given would or not constitute a sufficient defence for Colonel Crawley's obedience of it. The principle of "respondere superior," though it certainly would not extend to such a case as between civilians, is admittedly of much wider application in military matters; and although we believe that it never has been recognised by any competent authority that the order of a superior officer, manifestly illegal on the face of it, is a sufficient protection to the inferior who obeys it; and although in certain cases connected with riots and other civil disturbances, the direct contrary has been frequently de-

clined, still, where there is any doubt upon the question, and especially where the matter affects no one not bound to military subjection, we think it probable that the defence would be valid.

We repeat, that in the proceedings of this most unhappy trial, we have no fault to find with the parties immediately concerned: not with the prosecutor, who seems to have instituted a most searching investigation into the only questions on which he was permitted to enter; not with the prisoner, who conducted his defence with singular ability, judgment, and good taste; not with the court, which could not possibly, in our opinion, have come to any other conclusion than it did; but we do complain most loudly, in the interests of law, justice, and humanity, of the omission, whether designed or not, from the articles of accusation, of the only charge which could have enabled the court really to investigate the true ground of offence—the only issue of sufficient national consequence to justify either the excitement felt by the public; or the expenditure lavished on the trial; and it is because of this omission that we feel compelled to say, that, viewed as a concession to the public demand for an inquiry, the Crawley court-martial has been an expensive and transparent sham.

THE REPORTING SYSTEM.

In our article of the 26th December, 1863, on the duties of the committee appointed at the meeting of the Bar in Lincoln's-inn Hall to inquire into the reporting system, we referred to the statement made at that meeting by Mr. Daniel, that the cause of the cessation of the Year Books in the 27 Hen. 8, was to be found in the rapacity of that monarch, who wanted for other purposes the money which had been set apart for the salaries of the reporters; adding, that no authority was cited for this assertion, and we were not in a condition either to confirm or refute it. Mr. Daniel has since informed us that he is under the impression that he cited an authority for it; but, be this as it may, the authority on which he relies is the work of Mr. John William Wallace, an American writer, intitled "The Reporters, chronologically arranged," 3rd ed., Philadelphia, 1855, which may be seen in the library of Lincoln's-inn. The passage, which is at p. 75, runs as follows:—"The Year Book of Hen. 8, particularly after the twelfth year of that king, is said to be inferior to any of the Year Books which preceded it—a fact which is attributed to the very sufficient cause, that the stipend which had been paid in former reigns was dropped in the time of Hen. 8." It is worthy observation, that in the preceding page we are informed, and truly, that there is no Year Book of that reign previous to the twelfth year. "The only years of Hen. 8 are the 12, 13, 14, 18, 19, 26, and 27." Neither does Mr. Wallace cite any authority for the position here advanced; and it is impossible to accept, as authority on such a subject, the ipse dixit of a person, and that, too, a foreigner living nearly 250 years after the event.

Having thus had occasion to refer to the treatise of

Mr. Wallace, we take the opportunity to direct attention to his testimony on another important matter connected with the subject of reporting, namely, the value of the American reports at the present day.

In p. 11, he says:—"Reporters nowadays make reporting a particular study: they follow the courts regularly, take notes for the purpose, examine the record, and prepare the case." But he adds in a note—"Some of them, I mean. I should be sorry to lay such things to the charge of some gentlemen who of late have undertaken the office of reporters; things certainly, that they know not of."

The next sentence gives Mr. Wallace's view of the security possessed by the American public for the accuracy of reports in that country. "They, i. e. the reporters, obtain the original written opinions of the Court, often submit the report to counsel and the Court, and the volumes appear so soon after the decision they record, that if any error should exist, it could scarcely fail to be corrected." We should like to ask a few questions here. Suppose, in America, a case is complained of as misreported, in respect either of omission or commission, what power exists to compel the reporter to acknowledge and amend the error? And if he admits its existence, how is the evil remedied? Is he compellable, at the expense either of the State or himself, to cancel the sheets or leaves, as the case may be, of peccant matter, replace them by others, and withdraw from circulation the uncorrected copies of the report? On all these subjects, we expect to be enlightened by the committee now sitting.

As connected with the subject of "reports, reporting, and reporters," we find a pamphlet with the above title, published by a member of the bar, Mr. Almaric Rumsey, of Lincoln's-inn, in the shape of "an address to the gentlemen of the junior bar on the present crisis." The following are the views advocated by him, put into the form of a resolution:—

"That a reform in the system of reporting is urgently required.

"That it is desirable that a digest or revision of old reports be made, as suggested by the Lord Chancellor in his speech in the House of Lords on the 12th June last.

"That existing interests should, as far as possible, be respected.

"That a staff of barristers should be provided to report and digest the cases for each current year or other stated period, and that, after the publication of the volume or volumes for such year or other stated period, no other reports for such year or other stated period should be cited.

"That until the publication of such volume or volumes, any other reports should be cited as at present.

"That a staff of barristers should be provided for the digest or revision of old reports, and that, after the publication of any portion of such digest or revision, no other reports for the period comprised in such portion should be cited.

"That until the publication of such portion, any other reports should be cited as at present.

"That in forming the staff for reporting and digesting cases, and the staff for digest or revision of old reports, a preference should be given to such barristers as shall, at the time of forming such staffs respectively, be employed either on the authorized or on the unauthorized reports.

"That all barristers so employed, who cannot be placed on either of such staffs, should receive pecuniary compensation, to be calculated on actuarial principles.

"That no sufficient power exists in the bar to forbid the citation of any current or old reports, or to carry out any arrangement for pecuniary compensation, and that these objects cannot be obtained without the assistance of Parliament.

"That a memorial be presented to the Lord Chancellor, requesting him to introduce a bill to carry out the above-mentioned objects."

Reviews.

The Law of Copyright in Works of Literature and Art, and in the Application of Designs, with the Statutes relating thereto. By CHARLES PALMER PHILLIPS, of Lincoln's Inn, Esq., Barrister-at-Law. Author of "The Law of Lunacy."

[V. & R. Stevens, Sons, & Haynes. 1863.]

MR. PHILLIPS'S work is at once an able law book, and a lucid treatise, in a popular form, on the rights of authors and artists. The wants and interests of the legal practitioner are consulted by a careful collection and discussion of all the authorities, while the non-professional reader will find in the book a well written and perfectly intelligible statement of the law upon the matters of which it treats. It may be questionable whether there are many subjects with which it would be practicable to deal in this satisfactory manner. If copyright were not to such an extent the creature of statute, it would scarcely have been possible to treat of it popularly in any other than the brief but bewildering form of a "handy-book." But as the decisions of the Courts are, for the most part, mere expositions of the different statutes, the cases require no depth of technical knowledge, and little more than an attentive perusal for their apprehension.

It is no longer a matter of other than pure anti-quarian interest to consider whether or not there was copyright at common law. The question, without being decided, was set at rest by the great case of *Miller v. Taylor* (4 Burr. 2303). The reasons for and against the existence of the right, independently of statute, are very well stated by Mr. Phillips, at p. 45. It is pretty certain, that if the Legislature had not interposed, by the Statute of Anne, to substitute a statutory for a judicial determination of the question, the judges would ultimately have arrived at a conclusion in favour of the right as a subject of property at common law. In truth, there seems no sound reason why inventions of the mind, which are worth money, should be less protected by the law than the products of mere mechanical skill; and it is clear from the arguments and judgments in *Miller v. Taylor*, that the judges, with one or two very distinguished exceptions, were disposed to take that view. If the common law had been permitted to obtain its natural development on the subject, it might, indeed, have become necessary to appeal to the Legislature to set a limit to the duration of the exclusive right to reproduce, but we should have been spared a great part of the fragmentary and voluminous legislation on the subject. The law would have been more accessible and portable than it is at present,—scattered over some twenty statutes, from the 8 Ann. c. 19, down to the 26 Vict. c. 68, and occupying nearly a hundred closely-printed pages of Mr. Phillips's book.

Mr. Phillips divides his subject into two heads—viz. copyright before, and copyright after, publication. "They are," the author observes, "distinct

and several rights. Copyright before publication is the more ancient of the two. It is the exclusive privilege of first publishing any original and material product of intellectual labour. Its basis is property; a violation of it is an invasion of property, and it depends upon the common law; the privilege is simply a right of user incidental to the property, exclusively vested in the absolute and lawful possessor of the material product. The right exists in every unpublished innocent production of art, literature, or science."

The author cites, and comments upon, two recent decisions, which contain a very full discussion of the law on this part of the subject. (*Prince Albert v. Strange*, 2 De G. & S. 652; 1 Mac. & G. 25; *Turner v. Robinson*, 10 Ir. Eq. Rep. 121, 510). The latter of these cases suggests the difficulty of defining what publication is, in the sense that renders it an abandonment by the author of his right of property in the product of his intellect. It was decided, in the Court of Chancery in Ireland, that there had been no publication of a picture which had been sold by the artist for the purpose of being engraved, and had been exhibited in public in several towns in the United Kingdom. This view of the law is certainly inconsistent with that put forward by Mr. Phillips in his first chapter; but we must not be understood, nevertheless, to express any dissatisfaction with the learned author's conclusions.

With reference to copyright after publication, the author explains his treatment of the subject as follows (p. 47):—"Admitting copyright after publication at the present day to be simply a creature of statute law, its nature, extent, and operation must, of course, be examined by reference to that law. By several acts of Parliament, this exclusive privilege has been conceded to workmen in many different fields of mental labour; to various artists as well as to the composers of literary and musical works; but unfortunately, though the several acts have a certain degree of family likeness to each other, their features are so far dissimilar, that the law regulating copyright, in the various offspring of the busy brain, must be looked for in many scattered pages of the statute book. The only safe path in the further consideration of copyright law now seems to be, to adhere to the course taken by the Legislature, and so separately to treat of the privilege as it exists in the several subjects to which it extends." Accordingly, the author proceeds to treat in order, of copyright in literary and musical works; in the representation of dramas and musical compositions; in public lectures; in engravings; in paintings, drawings, and photographs; in sculpture, and the application of designs.

The history of the law of copyright in paintings is the subject of an interesting and well-written chapter (c. 9). The author mentions a curious, but by no means exceptional, instance of the error into which a great legal functionary may fall who is tempted to hazard an opinion on what the law should be, instead of restricting himself to pronouncing what it is. In *De Berenger v. Whible* (2 Stark. 548), Abbott, C. J., declared, that "it would destroy all competition in art to extend copyright to painting." "Many eminent artists," says Mr. Phillips, "thought differently;" and fortunately the late Lord Lyndhurst took a wiser view of the matter than Lord Tenterden. In 1858 a petition was presented by him to the House of Lords, and a committee appointed to consider the complaints of artists; but Parliament was dissolved before any bill could be considered. It is probable that no legislation would have taken place for some time to come, if it were not for the clamour of the photographers, who made up in number for what they lacked in importance, and who succeeded

in 1862 in obtaining an act, by which provision was made for the protection of painters, draftsmen, and themselves. (25 & 26 Vict. c. 68).

The result of the many statutes on the subject of copyright seems to be, that all the different products of art and intellect are now adequately protected. The time would, therefore, appear to have arrived when the different enactments may advantageously be swept into one, and we recommend the subject to the professional men in the House of Commons who desire to do homage to the codifying tendency of the age, and to earn a reputation for literary and legal accomplishment, at the cost of an amount of exertion which the aid of Mr. Phillips's book would render very moderate.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—I think that the subjoined form of condition may, in some measure, meet your correspondent's requirement.

Your obedient servant,
WALTER C. METCALFE.

Epping, Dec. 23, 1863.

"That if the above bounden A. B., his heirs, executors, or administrators, do pay unto the above-named C. D., his executors, administrators, or assigns, the sum of £—sterling, in the proportions and on the days following, that is to say, £—, part thereof, on the — day of — next; £—, further part thereof, on the — day of —, 18—; and £—, remainder thereof, on the — day of —, 18—; and also (in case any or more of the said sums of £—, £—, and £— shall remain unpaid after the day, or respective days, whereon the same is or are respectively hereby made payable), interest on the sum or sums so remaining unpaid, at the rate of 6l. per cent. per annum, from the said day, or respective days, until payment of the said sum or sums, without any deduction, except for property or income tax. Then the above-written bond or obligation," &c.

[Coke found in the "et ceteras" of Littleton suggestions for much valuable comment. If our correspondent had been equally attentive to the significance of the words with which his form concludes, he would not, perhaps, have been so well satisfied with it. "Etc." here stands for "shall be void and of no effect," so that one alternative of the condition is, that if the obligor, having failed to pay an instalment on the appointed day, at any time afterwards pays or tenders interest on the money in arrear, the bond shall be void; and there is, therefore, no assignable time at which the bond must be satisfied, or the penalty forfeited. But the object of the bond is to enable the obligee, if he thinks fit, to treat the penalty as absolutely forfeited, and recoverable (in judgment) immediately upon default in payment of any instalment, as well as to secure him interest at 6l. per cent. on any arrears. This is not now of any practical importance, if the obligatory part of the bond is properly framed; and the question as to the form of the condition (not perhaps insoluble) is propounded merely as a curious problem in drafting.]

At a Privy Council, held at Osborne on the 7th inst., it was decided that Parliament will meet, for the despatch of business, on Thursday, the 4th February,

CONTRABAND OF WAR.

THE following observations on the important subject of "Contraband of War" are taken from the little treatise recently published by Mr. F. Hargave Hamel, intitled, "International Law in connexion with Municipal Statutes, &c., considered with reference to the case of The *Alexandra*."—

"Perhaps there is nothing more difficult than to lay down a settled rule to distinguish between what does and what does not constitute contraband of war, because the character of ships and merchandise in this respect changes with ever-varying circumstances, such as the object of the voyage, and the destination of the ships taken in connexion with the nature of the goods. Thus, when guns, gunpowder, swords, and bayonets are bona fide consigned from one neutral port to another, they are no more contraband of war than would be a cargo of guano; whilst a ship-load of wheat, or even of paving stones, bound for, and seeking entry into, a belligerent port might, with evidence of intention to succour the enemy, be deemed prize of war, since the one might be intended to feed the enemy, and the other to repair his fortresses.

"Neutrals are naturally anxious to diminish the list of contraband, that they may extend their commerce by conveying the goods of the hostile powers, with the less risk of confiscation. Belligerents, on the other hand, are of course interested, particularly if they possess a predominating command of the seas, in increasing the prohibitory list, to enable them the more effectually to deprive the adversary of the means of maintaining or improving his warlike position.

"When the number and variety* of the goods that have from time to time been declared contraband of war are taken into consideration, it is scarcely matter of surprise that the decisions of the authorities are so various and uncertain. Vattel enumerates arms, military and naval stores, horses, timber, and, in case of siege, provisions, as contraband of war†; and, according to the same author, even ships come within that denomination. These opinions are upheld by various treaties, ordinances, and legal decisions. Sail-cloth, tar, pitch, and hemp, being necessary to the equipment of vessels of war, and also ship timber, have been added to the list; although in some instances their hostile character has been negatived by proof of destination, as, for instance, when transmitted to an exclusively commercial port, from which it might fairly be presumed that they were to be applied to civil purposes. The raw material is viewed with more favour than articles fabricated from it‡. By a treaty between the United States and this country in 1796, it was expressly provided that unwrought iron and fir planks should be exempted from seizure.

"Under these circumstances, it would be utterly fallacious to lay down rules of universal application, as to what constitutes contraband of war. The invention of novel instruments of warfare has neces-

sarily augmented the number of contraband articles, by embracing new materials required to render such instruments serviceable, whereby goods formerly deemed innocuous, have by force of circumstances become liable to confiscation at the hands of those against whom they are attempted to be used. Such, of course, was the case when gunpowder superseded the catapult and the bow; and again, more recently, when the power of steam was adopted for propelling vessels of war. Thus, during the Crimean campaign, engines, boilers, and other marine machinery, were amongst the prohibited articles of commerce; and now that the explosive power of gun-cotton is known, were its application to warlike purposes to become general, it would necessarily bring cotton, as well as the chemicals by which it acquires its new character, within the list of contraband of war, as the components of gunpowder, sulphur, saltpetre, &c., came to be treated.

"The most important feature in the law of contraband of war, in relation to the controversial question of the day, is, that ships and armed vessels come within that denomination.

"This opinion has prevailed and been acted upon from a very early date, and has gained strength, and indeed the full force of international law, by recognition in treaties and by the decisions of Courts, which have been accepted by European as well as American States, and by none more unequivocally than the latter. So far back as 1625, by treaty between England and the Low Countries, 'ships, arms, &c., by express mention, are deemed 'contraband of war;' and the articles enumerated, as well as 'ships and persons on board,' are declared 'good prize'. The terms of this treaty would seem to embrace every description of ship; but in 1661, by treaty between this country and Sweden†, the expression is narrowed to 'ships of war' and guardships; this very limitation points the more distinctly to the fact, that ships for warlike purposes are particularly intended. Vattel draws no distinction between contraband for naval and military warfare. Indeed, so far from considering that neutrality is violated by trading in either with the belligerent, he thus distinctly affirms the contrary, with reasons for the opinion:—'If a nation trades in arms, timber for shipbuilding, ships, and warlike stores, I cannot take it amiss that it sells such things to my enemy, provided he does not refuse to sell them to me also at a reasonable price. It carries on its trade without any design to injure me, and by continuing it in the same manner as if I were not engaged in war, it gives me no just cause of complaint.' Nay, he brings the matter home to the precise state of affairs as at present subsisting between this country and the transatlantic belligerents, for he proceeds to explain, placing himself, for argument, in the place of the belligerents:—'In what I have said above, it is supposed that my enemy goes himself to the neutral country to make his purchases.' This is exactly what the Federals are doing here with regard to arms, and what the Confederates have been charged with doing in respect of ships. But he carries the analogy still farther, by the discussion of another suppositious case—that of 'neutral nations resorting to the enemy's country for commercial purposes. It is certain, that as they have no part in my quarrel, they are under no obligation to renounce their commerce for the sake of avoiding to supply my enemy with the means of carrying on the war against me.'

"Now all this has reference, *inter alia*, to ships, and it is difficult to conceive how consistently with this

* The following articles have on different occasions been declared contraband of war, viz. butter, cheese, copper in sheets, cordage, corn, hemp, masts, pitch, rice, rosin, salted cod, herrings and salmon, sea biscuits, tar, and wine.

† Les choses qui sont d'un usage particulier pour la guerre et dont on empêche le transport chez l'ennemi s'appellent marchandises de contraband. Telle sont les armes, les munitions de guerre, les bois et tout ce qui sert à la construction et à l'armement des vaisseaux de guerre, les chevaux et les vivres mêmes en certaines occasions, ou l'on espère de réduire l'ennemi par la faim (Vattel, book iii, ch. 7, s. 112).

‡ The *Jonge Margaretha* (1 Rob. Adm. 188); The *Nephtines* (3 Rob. Adm. 908); The *Three Jefferies* (4 Rob. Adm. 242); The *Signora de Begona* (5 Rob. Adm. 47).

* Treaty of Southampton, September, 1625.

† Treaty of Whitehall, October, 1661.

‡ Vattel, book 3, s. 150.

the British subject can be guilty of a breach of international law, or subject himself, much less his Government, to any legitimate complaint, by carrying on with either of the belligerents, in the ordinary course of commerce, his almost peculiarly national business of a builder and vendor of ships. 'If,' says Vattel, 'they only continue their customary trade, they do not thereby declare against my interests; they only exercise a right which they are under no obligation of sacrificing to me.' He backs this argument by the remarkably clear and strong common-sense observation, that should they (the neutrals) affect to refuse selling me a single article, while at the same time they take pains to convey an abundant supply to my enemy, with an evident intention to favour him, such partial conduct would exclude them from the neutrality which they enjoyed.'

"Neutrality, then, as regards contraband of war, including ships as well as arms, according to this great authority, consists not in the refusal to supply the belligerents, but in supplying indifferently to either the merchandise they may require in accordance with the accustomed and undisturbed course of commerce. The neutral may not only sell articles contraband of war in his own country, but may send them to either of the belligerents, subject, of course, to the liability to capture by the other. The neutral market is open to the sale of ships as well as other instruments or munitions of war. The foreign belligerents may purchase from the neutral subject, both or either of these articles of contraband, they being the judges of what they require; and it appears totally at variance with the principles of neutrality, to refuse ships to the one, if we sell arms to the other, and vice versa.

"The doctrine here contended for, the practice of centuries, the dictum of Vattel just cited, the opinions of other great writers to the same effect, have been emphatically endorsed by the Americans themselves, the supreme courts of the United States having solemnly decided that there is 'nothing in their own laws' (and they have a Foreign Enlistment Act, whose provisions as to ships are analogous to our own), 'or in the law of nations, that forbids their citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale.' Nay, more, that 'it is a commercial adventure which no nation is bound to prohibit' (the judicial authorities of the United States not being ignorant of our Foreign Enlistment Act), 'and which only exposes the person engaged in it to the penalty of confiscation.'

"There is an end, therefore, to all doubt, certainly as between the United States and this country, as to the fact that ships, armed ships, are contraband of war. It follows that the rights, privileges, and liabilities of neutrals in respect of ships, differ nothing from those which relate to arms and other articles of contraband.

"On the breaking out of hostilities between nations, the subjects of a neutral territory can only supply contraband of war to either of the belligerents at the risk of capture and confiscation by the other; subject to these consequences, the adventure is perfectly lawful. The deprived party has no right to complain of his loss, or to demand restitution through his own Government; nor do these perilous enterprises of the subject of a neutral power expose his Government to the charge of a breach of neutrality†. 'It was,' says Kent, 'contended on the part of the French nation, in 1796, that neutral governments were bound to restrain their subjects from selling or exporting contraband of war to the belligerent powers.' But it was

successfully shewn, on the part of the United States, that neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerent powers contraband articles, subject to the right of seizure in transitu. This right has since been explicitly declared by the judicial authorities of this country. (*Richardson v. Maine Ins. Comp.*, 6 Map. Rep. 113; *The Santissima Trinidad*, J. Wheaton, 282). The right of the neutral to transport, and of the hostile power to seize, are conflicting rights, and neither party can charge the other with a criminal act*.

"Formerly, by the law of nations, the carrying of contraband articles of war worked a forfeiture of the ship†. In modern practice, except when the contraband articles belong to the owner of the vessel, or where the case is attended with particular circumstances of aggravation, the penalty has been mitigated to forfeiture of freight and expenses‡. Bynkershoek strongly vindicates the strictness of the ancient law. He says, 'Publicabam quoque naves amicas si scientibus dominis contrabanda ad hostes deferrent; et nisi pacta impediunt omnino publicandæ sunt quia earum domini operantur rei illicitæ§.' And according to Heineccius—'Quemadmodum ejusmodi pacta ad exceptionem pertinent; ita facile patet regulam istis non tolli, adeoque certi juris esse ob merces illicitas naves etiam in commissum cadere||.'

COURTS-MARTIAL.

THE following observations of *The Wellington Gazette and Military Chronicle*, of the 15th December, 1863, on the subject of courts-martial, are deserving attention. They are contained in an article on the trial of Colonel Crawley:—

"The expense and trouble of this monster court-martial have been incurred, and we may as well see if we can extract any moral out of it. There are some people who think that the 'days of courts-martial are numbered;' but we would ask, first, how is it possible to get on without them? and, secondly, what have they done to call down such a sweeping condemnation? There are innumerable military offences which could never be treated satisfactorily by a civil tribunal, and the present court-martial furnishes an instance. The second charge is, in effect, that Colonel Crawley has endeavoured to get out of a scrape by throwing his own fault on another's shoulders; is there anything in common or statute law which renders such an evasion penal? Could a jury of grocers and publicans, reeking with sanded sugar and spurious pale ale, be competent to decide whether such conduct was 'unworthy of an officer and a gentleman?' But if this be too refined an instance, let us take some of the ordinary offences of private soldiers. Can any civil court form an accurate estimate of 'persuading to desert,' 'improper behaviour during divine service,' 'disrespect to the Queen,' 'getting drunk under rules,' 'habitual drunkenness,' 'selling arms,' 'selling a medal,' and 'creating false alarms?' Yet all these, and a hundred more, are offences incident to military life, and to exempt them from punishment would be to strike at the root of discipline, and to invoke demoralisation. Again: what can have courts-martial com-

* 1 Kent's Com. 148.

† Declaration of England and Holland against Spain, art. 20, the 17th September, 1625. Treaty between England and France, art. 15, the 3rd November, 1653.

‡ *The Ringende Jacob* (1 Rob. Adm. 91); *The Jongs Tobias* (Id. 329); *The Franklin* (3 Rob. Adm. 217).

§ Bynk. Q. I. P., lib. 1, ch. 14.

|| De Nav. ob Vect. Melc. Vetit. Commiss., ch. 2, a. 6.

* J. Wheaton's Reports, 348.

† Vattel, book III, cf., sect. 113.

mitted? The present trial is inconceivably long, chiefly from the immense number of witnesses; for this, however, it is not the court that is responsible, but rather those who have unduly agitated the public mind, and rendered it necessary to produce anybody who knows, or thinks he knows, anything. The cross-examination of the witnesses has in some instances (as in that of Lieutenant Fitzsimon) been vexatious and unproductive; but this is the work of the prisoner and his counsel, not of the court or the prosecutor.

"There has been, however, a serious source of delay arising from disputes between the prosecution and the prisoner as to the admissibility of evidence, and another, from the peculiar custom of carrying on all the proceedings in writing. We think that the latter custom might with advantage be abolished; and with regard to evidence, we would offer a few concluding remarks.

"The principles of the law of evidence are few and simple, and the chief difficulty is found in its ready adaptation to particular circumstances.

"It is in the ready application of the principles of evidence that courts-martial appear to be defective. This gives the prisoner's counsel a feeling of power, which sometimes rises into arrogance, and may call down a very proper rebuke. Would it not be reasonable that all officers should have an opportunity of preparing themselves for the judicial duties which may at any time be thrust upon them? The Staff College offers many advantages to the young officer; might it not be so organised as to include the study of the rules of evidence? These rules are as easy to learn as those of gunnery, of tactics, or of engineering. Those who have taken in principles when young, and have had some years to digest them, can apply them readily to any problem before them, while a man who hastily 'crams' up for an occasion is as helpless as the ancient philosopher who had only learnt to swim on dry land. Let us see this reform be introduced, and we shall soon see officers enabled to hold their own in their peculiar courts. To give the power of speech to counsel, and to abolish for ever the system of written questions and answers, would do much to shorten the proceedings; but the main point is to give moral dignity to the court, whereby it may curb the luxuriance of speech, and keep prosecutor, prisoner, and counsel within the limits defined by the issues which are brought before it."

BOOK RECEIVED.

Reports, Reporting, and Reporters.—An Address to the Gentlemen of the Junior Bar, on the present Crisis. By Almaric Rumsey, of Lincoln's-inn, Barrister-at-Law.—Amer, 1863.

Court Papers.

COMMON-LAW CAUSE LISTS, HILARY TERM, 1864.

Court of Queen's Bench.

NEW TRIALS.

FOR JUDGMENT.

Midd.—Bailey v. Edwards

FOR ARGUMENT.

Moved Trin. Term, 1862.

Midd.—Tenant v. Bankart
(Stands for arrangement,
part heard)

Moved Mich. Term, 1862.

Chester—Reg. v. Lord Delamere & ors. (Part heard)

Moved Easter Term, 1863.

London.—Adams v. Graham

—Same v. Same

—Fitch & an. v. St. George

Kent—Lister v. Hanson
Norfolk—Coe v. Wise (Pt hd)
Durham—Slater v. Mayor of
Sunderland

Tried during Term.

Midd.—Lacy v. Rhys

London.—Goss v. Scornes

—Wishart & an. v. Fowler

Moved Trin. Term, 1863.

Midd.—King v. England

London.—Harrington v. Binns

Midd.—Hodgman v. West

Midland Railway Co.

London.—Crane v. London Dock

Co.

—Same v. Same

—Pilgrim & an. v. Hirsch-

field

—Neale v. Hooper

Northampton—Wartnaby v.

Lord Bateman

York—Bennison v. Cartwright
Durham—Brammell v. Eglington

Northumberland—Riddell v.

North-eastern Railway Co.

Lancaster—Heys v. Hindle

Liverp.—Pust v. Dowie

—Stokoe & ors. v. Hall

—Barber v. Fenton

—Laird v. Wakefield

Bristol—Gay v. Matthews

Oxford—Duke of Marlboro-

rough v. Osborne

Surrey—Gandy & Wife v.

Jubber

—Kalmweller v. Dobson

—Teale v. Wilhelm

—Weaver v. Lennard

—Guy v. Gurney & an.

—Beck v. Farey

Glamorgan—Morgan v. Vale

of Neath Railway Co.

SPECIAL PAPER.

Those marked thus * are Special Cases, and thus † Demurrers.

FOR JUDGMENT.

*Cator v. Lewisham Board of
Works

†Clapham v. Atkinson

†Taylor & ors. v. Dewar

FOR ARGUMENT.

†Worthington v. Ludlow (Case
to be stated)

†Gill v. Summers (Stands over
till judgment given in War-

ling v. Underhill, in Ex. Ch.)

†White v. Bennett

*Gumm v. Tyrie

†Lloyd v. Ginher & ors.

†Mulreany & an. v. Lord
Ebury & ors.

†M'Millan v. Powles

*Parsons v. Edwards-Wood

†Penfold v. West & ors.

†Dingwall & ors. v. Edwards

*Hopkins v. Clarke

*Bulgin v. Frankenstein

*In re Tynte v. Machin Col-

liery Co.

†Pawle v. Pearce

†Wood v. Cox

*Sugden v. Thomas & an.

Jenkins v. Griffiths (Ap. from

County Ct.)

†Harris v. Queen Insurance

Co.

†Edwards v. Kerriton

*Ricket v. Metropolitan Rail-

way Co.

†Balden v. Reil.

ENLARGED RULES.

First Day.

In re E. A. Blackett & ors.

In re E. L. Levy

In re T. Johnson

Bryant v. Foot

In re Hayward v. Metropoli-

tan Railway Co.

In re J. Morris

Reg. v. Smith.

CROWN PAPER.

Tewkesbury Reg. v. Severn Navigation Commissioners.
Surrey Measor. (To stand over till judg-
ment given in the House of Lords in the
Mersey Docks case).

Yorkshire Hague.

Norfolk Middle Level Commissioners.

Lancashire Duke of Devonshire v. Rawlinson.

Norfolk Reg. v. Commissioners of Sewers for the
Hundred of Wisbeach.

Metropolitan Po- }
lice District .. } — D'Eyncourt & an.

Middlesex Carruthers.

Yorkshire Platts.

Huntingdonshire Latham.

Cheeshire Congreve v. Overseers of Township of Up-

ton.

Southampton Reg. v. Cousins.

Derbyshire Mousley.

Staffordshire Handley.

Lancashire Nash v. Reg.

Lincolnshire Mawley & an. v. Hopkinson.

Bristol Morgan v. Shackleton.

Nottinghamshire Reg. v. Workshop Local Board of Health.

Margate Pilcher v. Stafford.

Derbyshire Bennett v. Barton.

Cheahre Reg. v. Guardians of the Poor of the Mac-
clesfield Union.
Staffordshire.... Phipps v. Whitehouse.

Court of Common Pleas.

NEW TRIALS.

Moved Mich. Term, 1863.
Midd.—Packer & an. v. Great
Western Railway Co. (To
stand till Beale v. South Devon
Railway Co., in Exch.
Chamber is disposed of)
Lond.—Sichel v. Lambert
— Richardson v. Elgee
Wilts.—Webber v. Stanley
Bucks.—Skull v. Glenister
Sussex.—Morgan v. Knight
Surrey.—Grell & an. v. Levy
— Courtenay v. Wagstaff
— Reed v. Wagstaff
— Marsh v. Conquest
— Fry v. Birnatingl
Liverp.—Thomson v. Healey.

DEMURRER PAPER.

SPECIAL ARGUMENTS.

Monday Jan. 18.
Naylor v. Mortimore (D.)
Hodgson v. Little (Ap.)
Barber & ora. v. Nottingham
and Grantham Railway and
Canal Co. (D.)
Dakin v. Oxley (D.)
Submarine Telegraph Co. v.
Dickson & an. (D., to stand
till issues completed)
Smart v. Jones (D.)
Mace v. Philcox (Case, Nisi
Prius)
Green v. Pell (D.)
Borrowman v. Rosell (D.)
Parton v. Croft (County Ct.
Ap.)
Vestry of St. George, Hano-
ver-square v. Sparrow (Ap.)
Clarke v. Fuller (County Ct.
Ap.)
Morris v. Carrington (County
Ct. Ap.)
Wednesday, Jan. 20.
Hackett v. Churchw. of Long
Bennington (Sp. C. by ord.)
Tobin v. Reg. (D.)
Wood v. Stourbridge Railway
Co. (Case from arbitrator)
Hughes v. Birkenhead Rail-
way Co. (D.)
Anderson v. Curtis (D.)
M'Kenzie v. Steele (Case by
order)

ENLARGED RULES.

First Day.
Cawthron v. Trickett
Gasquoine v. Cattlin
In re Chauntier v. Holroyd
Beunett & an. v. Benham.
Fifth Day.
In re Oxlade v. North-eastern
Railway Co.
Generally.
Morris v. Latour (Cox & Co.
garnishees)
Sürman & an. v. Gelpcke &
ora. (Goschen & ora., gar-
nishee).

CUR. ADV. VULT.

Aldridge v. Great Western
Railway Co. (Stand over
for case in House of Lords)
Pigott v. Cubley
Jolly & an. v. Rees.

Court of Exchequer.

SITTINGS—HILARY TERM.

<i>Days in Term.</i>	<i>Banc.</i>
Monday Jan. 11	Motions and Peremptory Paper.
Tuesday..... 12	Errors, Peremptory Paper, and Motions.
Wednesday..... 13	.....
Thursday..... 14	.....
Friday..... 15	.....
Saturday..... 16	.....
Monday..... 18	Special Paper.
Tuesday..... 19	.....
Wednesday..... 20	Special Paper.
Thursday..... 21	.....
Friday..... 22	.....
Saturday..... 23	Criminal Appeals
Monday..... 25	Special Paper.
Tuesday..... 26	.....
Wednesday..... 27	Special Paper.
Thursday..... 28	.....
Friday..... 29	.....
Saturday..... 30	.....
Monday..... Feb. 1	.....

Days in Term.

Tuesday..... Jan. 13	Middlesex, first Sitting.
Monday..... 18	London, first Sitting.
Wednesday..... 20	Middlesex, second Sitting.
Monday..... 25	London, second Sitting.
Wednesday..... 27	Middlesex, third Sitting.

Nisi Prius.

NEW TRIALS.

FOR ARRANGEMENT.
Moved Hilary Term, 1863.
Lond.—Kühn v. Bicker Caar-
ten (standing over for ar-
rangement)
Moved Easter Term, 1863.
Lond.—Beavan v. Countess of
Waldegrave
FOR ARGUMENT.
Gloster—Sleeman v. Barrett
Midd.—Dodd v. Jones
— Gwoyne v. Armitage
Lond.—Stapleton v. Haymen
— Miller v. Conway
Ipswich—Bird v. Bugg
Shrewsb.—Nicholls v. M'Do-
nald
Monmouth—Gregory v. West
Midland Railway Co.
Croydon—Bowes v. Pontifex
Nottingham—Peach v. Hey-
nemann
— Bennet v. Hickson
Derby—Brunt v. Midland
Railway Co.
Salisbury—Bush v. Beavan
York—Harrison v. Duncan
Liverp.—Whitaker v. Whita-
ker
— Whitaker v. Jackson
— Bennett v. Maxwell.

SPECIAL PAPER.

FOR JUDGMENT.
Stockport Waterworks Co. v.
Potter & ora. (Sp. C., heard
8th and 9th June, 1863)
FOR ARGUMENT.
Brewer v. Dimmock (D., part
heard, standing over for ar-
rangement)
The Anglo-Californian Gold-
mining Co. v. Lewis (D., to
stand over)
Earl of Lonsdale v. British &
Irish Magnetic Telegraph
Co. (Limited) (D., to stand
over till after argument of
Sp. C.)
Kearsley v. Oxley (D.)
Whitaker & ora. v. Whitaker
(D., to come on with rule
in New Trial Paper)
Richardson & an. v. Levey &
an. (D.)
Mason v. Ribbey (Ap.)
Richardson v. Arthur (Ap.)
Sutton v. Great Western Rail-
way Co. (Sp. C., by order of
Nisi Prius)
Ruffles v. Wichelans (D.)
Brocklebank v. Robinson (D.)

PEREMPTORY PAPER.

*To be taken on the first Day of Term after the Motions,
and to be proceeded with the next Day, if necessary, be-
fore the Motions.*

Cox v. Cook (To set aside verdict for plaintiff and enter a
nonsuit).

ERRORS AND APPEALS.

FOR JUDGMENT.
Beal & an. v. South Devon
Railway Co. (Ap.)
Kelly v. Lawrence (E. on bill
of exceptions)

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NOTICE.

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THE JURIST.

LONDON, JANUARY 16, 1864.

PARLIAMENT has been summoned to meet for the despatch of business on Thursday, the 4th February. The approaching session, like the last, will open under favourable circumstances for the passing of measures of law reform, and we hope that, like the last, it will be productive of many. The state of Europe is, indeed, such that war may break out at any moment; but even supposing such a misfortune to occur, that is no reason for arresting the march of legal improvement at home; and although the numerous projects for constructing railways and other public undertakings, especially in the metropolis, are likely, if persisted in, to give ample employment to parliamentary committees, still in the political atmosphere there is scarcely a breath stirring—a state of things the continuance of which is likely enough, however rash it would be to guarantee it.

A good instalment of legal reform was paid last session by the act 26 & 27 Vict. c. 125, founded on a bill introduced by the Lord Chancellor, intitled "An Act for promoting the Revision of the Statute Law, by repealing certain Enactments which have ceased to be in force or have become unnecessary." It remains to be seen whether any further steps towards the consolidation or codification of the law will be proposed by his Lordship, according to the principles laid down in the celebrated speech delivered by him in the House of Lords on the 12th June, 1863; and should this be so, whether those proposals will be discussed by the Legislature, or, like the former, be virtually taken on trust from the persons by whom the bills are drawn up.

The laws relating to the punishment of criminals, and the system of prison discipline are in a state anything but satisfactory. The commission issued by the Crown in December, 1862, "to inquire into the operation of the acts relating to transportation and penal servitude, and into the manner in which sentences of transportation and penal servitude have been, and are, carried into effect under the provision of the said acts, or any of them," have made their report, to which we drew the attention of our readers immediately on its publication. (See 9 Jur., N. S., part 2, p. 267). That report is unsatisfactory on many grounds—especially because two of its members dissented from the conclusions of their colleagues, and one of those two, the Lord Chief Justice, made a separate and very able report of his own, in strong antagonism to their views. Moreover, one principal feature of the report of the Commissioners is the recommendation that Western Australia be used as a place of transportation for criminals—a proposal which has excited an amount of opposition throughout the Australian continent sufficient to shew that any attempt to carry it out would be an extremely questionable, if not a dangerous, measure. We have already sacrificed enough to the absurd system of coaxing and petting criminals, introduced by the humanitarians of our day, without in-

curring, in further prosecution of their views, the risk of losing our colonies at the antipodes.

The marriage laws of the United Kingdom require large amendment; but it may be a question whether the time for this has yet arrived. One great source of difficulty is to be found in the peculiar marriage laws of Scotland and Ireland, of which the *Yelverton case*, lately before the tribunals of both countries, and which will, we believe, come before the House of Lords in the approaching session, affords a striking instance. There, an action was brought in Ireland against Major Yelverton for goods supplied to his wife, to which the defence was, that the person to whom they were supplied was not his *lawful* wife. In support of the plaintiff's case, it was attempted to prove a marriage in Scotland by mere acknowledgment of the parties, without any ceremony, civil or religious—a proceeding allowable by the law of that country, and also a marriage in Ireland by a Roman Catholic clergyman; to the latter of which the plaintiff set up for answer that it was void by statute, on the ground that although the female was a Roman Catholic the defendant was a Protestant. On this latter question the evidence was conflicting, but the jury found for the plaintiff. A suit in Scotland having been instituted, involving the same questions, it was contended that the evidence was not sufficient to establish an irregular marriage, even by the Scotch law: a point on which the judge by whom the cause was tried ruled one way, and the Court above another. As subsequent to both these marriages, or supposed marriages, the defendant had married another person, and had issue by her, the validity of that marriage, and the legitimacy of that issue, depend on the question of the validity of the former marriages.

There are other anomalies in our marriage law, and our law of divorce is not quite satisfactory. The great experiment of the establishment of a Court, empowered to grant divorces à vinculo matrimonii, by the 20 & 21 Vict. c. 85, has been a success upon the whole, especially as it has removed from our jurisprudence the reproach, that on the subject of divorce, there was not among us "*lex omnibus una*." But the Legislature which passed that statute disregarded too much the principle that the parties to the matrimonial contract are not the *sole* parties interested in its observance, and consequently have no right to put an end to it according to their mutual interest, pleasure, or caprice, but that third parties may be, and society always is, concerned in the matter. In this the Legislature have been under the necessity of retracing their steps, and the stat. 23 & 24 Vict. c. 144, accordingly enables the Crown, or other persons, to intervene in divorce suits, where there is reason to suspect collusion or connivance between the parties. On one occasion the present Lord Chancellor, when Attorney-General, announced his intention of proceeding by indictment against parties to collusive suits in the Divorce Court whenever he could obtain sufficient evidence of the fact; and it appears to us, that if such conduct cannot be reached by the common law, it should be rendered criminal by statute. And, indeed, it may be a question whether adultery ought

not to involve some consequences more serious to the guilty party than the dissolution of a marriage of which he is, perhaps, only too anxious to get rid. If respondents and co-respondents, against whom judgment is given by the Divorce Court in cases of alleged adultery, were liable to penal consequences, collusive divorces would be less frequent. Again, the position of co-respondents in that court seems a hard one. By the 20 & 21 Vict. c. 85, s. 28, any man may institute a suit against his wife, imputing adultery, and charge as partner in her crime, any person, however high in station, or irreproachable in character. So, in a petition by a wife against her husband for adultery, she may, with the permission of the Court, join as co-respondent the person with whom he is alleged to have committed adultery, who may be a female of purity ever so unspotted. And in either of the above cases, after the cause has been brought before the world, the petitioner may withdraw or compromise it with the accused spouse, while the unfortunate co-respondent, to whose reputation damage perhaps inestimable has been done, would have no other remedy than remuneration for his costs.

It is of course impossible to predict, far less enumerate, the proposals of legal reform which will come before Parliament. Let us hope that many sound ones will be brought forward, and that none but sound ones will receive the sanction of the Legislature.

CONSOLIDATED REGULATIONS OF THE SEVERAL SOCIETIES OF LINCOLN'S INN, THE MIDDLE TEMPLE, THE INNER TEMPLE, AND GRAY'S INN,

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Admission of Students.

1. That every person who shall have passed a public examination at any of the universities within the British dominions, shall be entitled to be admitted as a student to any Inn of Court, for the purpose of being called to the Bar, or of practising under the Bar, without passing a preliminary examination; but subject to rule 7, hereinafter contained.

2. That every other person applying to be admitted as a student to any Inn of Court, for the purpose of being called to the Bar, or of practising under the Bar, shall, before such admission, have satisfactorily passed an examination in the following subjects, viz. :—

(a). The English and Latin Languages.

(b). English History.

3. That such examination shall be conducted by a joint board, to be appointed by the four Inns of Court.

4. That for constituting such board, each Inn shall appoint six examiners.

5. That the examiners shall attend according to a rota to be fixed by themselves, and that two shall be a quorum.

6. That meetings of the examiners of students, applying for admission at any of the four Inns of Court, shall be held at least once in every week between the 20th October and the 10th August in each year.

7. That no attorney-at-law, solicitor, writer to the signet, or writer of the Scotch courts, proctor, notary public, clerk in chancery, parliamentary agent, or agent in any court original or appellate, clerk to any justice of the peace, or person acting in any of these capacities, and no clerk of or to any barrister, conveyancer, special pleader, equity draftsman, attorney,

solicitor, writer to the signet, or writer of the Scotch courts, proctor, notary public, parliamentary agent, or agent in any court original or appellate, clerk in chancery, clerk of the peace, clerk to any justice of the peace, or of or to any officer in any court of law or equity, or person acting in the capacity of any such clerk, shall be admitted as a student at any Inn of Court for the purpose of being called to the Bar, or of practising under the Bar, until such person shall have entirely and bona fide ceased to act or practise in any of the capacities above-named or described; and if on the rolls of any court, shall have taken his name off the rolls thereof.

8. That the following forms shall be adopted by the said societies on applications for admission as members :—

I, —, of —, aged —, the — son of — of —, in the county of — [add father's profession, if any, and the condition in life and occupation, if any, of the applicant], do hereby declare that I am desirous of being admitted a member of the honourable society of —, for the purpose of keeping terms for the Bar, and that I will not, either directly or indirectly, apply for or take out any certificate to practise, directly or indirectly, as a special pleader, or conveyancer, or draftsman in equity, without the special permission of the masters of the bench of the said society.

And I do hereby further declare, that I am not an attorney-at-law, solicitor, a writer to the signet, a writer of the Scotch courts, a proctor, a notary public, a clerk in chancery, a parliamentary agent, an agent in any court original or appellate, a clerk to any justice of peace, nor do I act, directly or indirectly, in any such capacity, or in the capacity of clerk of or to any of the persons above described, or as clerk of or to any officer in any court of law or equity.

Dated this — day of —.

(Signature).

We, the undersigned, do hereby certify that we believe the above-named — to be a gentleman of respectability, and a proper person to be admitted a member of the said society.

—, } Barristers of —.

Approved, { —.

Treasurer, or, in his absence, by two benchers.

9. That every person applying to be admitted as a student shall pay the sum of one guinea upon application for the form of admission; and that the sums so paid shall form part of the common fund herein-after mentioned, and shall every year be divided among the examiners for admission, in proportion to the number of examinations which during the year they shall respectively have attended.

Keeping Terms.

10. That students of the said societies, who shall at the same time be members of any of the Universities of Oxford, Cambridge, Dublin, London, Durham, the Queen's University in Ireland, St. Andrew's, Aberdeen, Glasgow, or Edinburgh, shall be enabled to keep terms by dining in the halls of their respective societies any three days in each term.

11. That students of the said societies who shall not at the same time be members of any of the said universities shall be enabled to keep terms by dining in the halls of their respective societies any six days in each term.

12. That no day's attendance in the respective halls shall be available for the purpose of keeping term,

unless the student attending shall have been present at the grace before dinner, during the whole of dinner, and until the concluding grace shall have been said.

Calling to the Bar.

13. That every student of the said societies shall have attained the age of twenty-one years before being called to the Bar.

14. That every student of the said societies shall have kept twelve terms before being called to the Bar, unless any term or terms shall have been dispensed with under the 46th rule, hereinafter mentioned.

15. That no student shall be eligible to be called to the Bar who shall not have attended during one whole year the lectures and private classes of two of the readers, or have been a pupil during one whole year, or periods equal to one whole year, in the chambers of some barrister, certified special pleader, conveyancer, or draftsman in equity, or two or more of such persons, or have satisfactorily passed a general examination. Provided that students admitted before the first day of Hilary Term, 1864, shall have the option of qualifying themselves to be called to the Bar, either under the rules of the Inns of Court of Hilary Term, 1852, or under these regulations.

16. That no student of any of the said societies, desirous of being called to the Bar, shall be so called, until the name and description of such student shall have been placed upon the screens hung in the hall, benchers' room, and treasury or steward's office of the society, fourteen days in term before such call.

17. That the name and description of every such student shall be sent to the other Inns of Court, and shall also be screened for the same space of time in their respective halls, benchers' rooms, and treasury or stewards' offices.

18. That no call to the Bar shall take place except during term; and that such call shall be made on the same day by the several societies, namely, on the sixteenth day of each term, unless such day shall happen to be Sunday, and in such case on the Monday after.

Certificate to practise under the Bar.

19. That no student of any of the said societies shall be allowed to apply for or take out any certificate to practise, either directly or indirectly, as a special pleader, or conveyancer, or draftsman in equity, without the special permission of the masters of the bench of the society of which he is a student, to be given by order of such masters, and that no such permission shall be granted until the student applying shall have kept twelve terms.

20. That such permission shall be granted for one year only from the date thereof, but may be renewed annually by order, as aforesaid.

21. That no student shall be allowed to obtain any such certificate unless he shall have attended such lectures and classes, or passed such an examination, or been such pupil, as under the rules herein contained would be necessary to entitle him to be called to the Bar: provided, that students admitted before the first day of Hilary Term, 1864, shall have the option of qualifying themselves to obtain such certificates, either under the rules of the Inns of Court of Hilary Term, 1852, or under these regulations.

22. That the regulations herein contained as to screening names in the halls, benchers' rooms, and treasury or stewards' offices, shall apply to students seeking certificates to practise as special pleaders, conveyancers, or equity draftsmen.

Council of Legal Education.

23. That a standing council shall be established, to be called "The Council of Legal Education," and to consist of eight benchers, two to be nominated by each

of the Inns of Court, and of whom four shall be a quorum. That the members of such council shall remain in office for two years, and that each Inn shall have power to fill up any vacancy that may occur in the number of its nominees during that period. That to this council shall be intrusted the power and duty of superintending the whole subject of the education of the students, and of arranging and settling the details of the several measures which may be deemed necessary to be adopted, and such other matters as herein in that behalf mentioned.

24. That the council of legal education shall have power to grant dispensations to students, who shall have been prevented by any reasonable cause from complying with all the regulations as to the attendance on lectures and classes which shall from time to time be established.

25. That all arrangements touching the number of public lectures to be delivered by the readers, and the hours and extent of private classes, shall be left to the council.

Education Terms.

26. That, for the purposes of education, the legal year shall be considered as divided into three terms, one commencing on the 1st November, and ending on the 22nd December; the second commencing on the 11th January, and ending on the 30th March; and the third commencing on the 15th April, and ending on the 31st July; subject to a deduction of the days intervening between the end of Easter and the beginning of Trinity Term.

Readers.

27. That, for the purpose of affording to the students the means of obtaining instruction and guidance in their legal studies, five readers shall be appointed, viz.:—

1. A reader on jurisprudence and civil and international law, to be named by the society of the Middle Temple.
2. A reader on the law of real property, to be named by the society of Gray's Inn.
3. A reader on the common law, to be named by the society of the Inner Temple.
4. A reader on equity, to be named by the society of Lincoln's Inn; and
5. A reader on constitutional law and legal history, to be named by the council of legal education.

28. That the readers shall be appointed for a period of three years.

29. That the duties of the readers (subject to regulation by the council of legal education) shall consist of the delivery of two courses of lectures in each educational term; of the formation of classes of students, for the purpose of giving instruction in a more detailed and personal form than can be supplied by general lectures; and of affording to students generally, advice and directions for the conduct of their professional studies.

30. That a separate course of lectures on international law shall be delivered, and shall for the present be delivered by the reader on jurisprudence and civil and international law.

31. That it shall be part of the duty of the reader on the common law to give instruction in his lectures on the subject of the office and duties of magistrates.

32. That the readers on common law and on equity shall have particular regard to the law of evidence in their lectures and other instruction to the students.

33. That (subject to regulation by the council of legal education) one of the courses of lectures to be delivered by the reader on common law, the reader on equity, and the reader on real property, shall be on

the elementary, and the other on the more advanced, portion to which his lectures apply.

Emoluments of Readers.

34. That each reader shall receive the fixed sum of four hundred guineas a year.

35. That the fees to be paid by students for the privilege of attending private classes shall be distributed among the readers at the end of each year, in proportion to the number of students attending their respective private classes.

Fees payable by Students.

36. That each student shall, on admission, pay a sum of five guineas, which shall entitle him to attend the lectures of all the readers.

37. That each student shall be privileged to attend all the private classes on payment of five guineas per annum.

Examinations on Subjects of Lectures.

38. That in the month of July, in each year, there shall be voluntary examinations of the students upon the subjects of the several courses of lectures, but no student shall be entitled to go in for examination on any of the subjects, unless he shall have obtained a certificate from the reader that he has duly attended his lectures and classes upon the subject on which he offers himself for examination. Each examination shall be conducted by some barristers or barrister (not being the reader of the class to be examined) to be nominated for that purpose by the council of legal education, and the council of legal education shall have power to allot such remuneration as they shall think fit to such examiners.

39. That no student who shall be entitled to a certificate of having attended the advanced course of lectures of the reader on common law, on equity, or on the law of real property, shall be at liberty to go in for examination upon the subject of the elementary course of lectures on the same head; and that no student shall be admitted for examination on the subject of the elementary course of lectures, on any of the last-mentioned heads, after he shall have kept more than eight terms, or for examination on any of the subjects, after he shall have kept all his terms, unless in either case the council of legal education shall for special reasons think fit to allow the same.

40. That, as an inducement to students to attend and make themselves proficient in the subjects of the lectures, exhibitions of the respective values herein-after mentioned, shall be founded, and be conferred on the most distinguished students at the examinations in July.

41. That five of such exhibitions shall be given to members of the advanced classes in the common law, in the law of real property, and in equity, and the most proficient among the students in jurisprudence, the civil law, and international law, and in constitutional law and legal history, every year, and be thirty guineas a year, to endure for two years, making ten running at one time.

42. That three of such exhibitions shall be given to members of the elementary classes in the common law, in the law of real property, and in equity, and be twenty guineas a year, to endure for two years, making six running at the same time; but to merge on the acquisition of a superior studentship.

43. That all the students attending the lectures of any of the readers shall be at liberty to attend the several oral examinations; and that all members of the Inns of Court who shall have obtained written orders of admission from any of the readers, or from any bencher of any of the societies, shall also be at liberty to attend such examinations.

General Examinations.

44. That general examinations shall be held twice a year, for the examination of all such students as shall be desirous of being examined previously to being called to the Bar; and such examinations shall be conducted by at least two members of the council, jointly with the five readers; and certificates of having satisfactorily passed such examination shall be given to such students as shall appear to the examiners to be entitled thereto.

45. That such examinations shall be held in or shortly before Michaelmas Term, and in or shortly before Trinity Term.

46. That as an inducement to students to propose themselves for such examination, studentships and exhibitions shall be founded of fifty guineas per annum each, and twenty-five guineas per annum each, respectively, to continue for a period of three years; and one such studentship shall be conferred on the most distinguished student at each general examination, and one such exhibition shall be conferred on the student who obtains the second position; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations; and the Inns of Court to which such students as aforesaid belong may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar. Provided that the examiners shall not be obliged to confer or grant any studentship, exhibition, or certificate, unless they shall be of opinion that the examination of the students has been such as entitles them thereto.

47. That at every call to the Bar, those students who have passed a general examination, and either obtained a studentship, an exhibition at such examination, or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day.

Common Fund.

48. That the four Inns of Court shall form a common fund by annual contributions, the amounts of which shall be mutually agreed on; and out of which fund shall be drawn the stipends to be assigned to the readers, the remuneration to examiners, and such studentships and exhibitions as shall from time to time be conferred upon students, and such necessary expenses as shall be incurred by the council of legal education.

49. That the fees of five guineas paid by students on admission shall form part of the common fund.

Commencement.

50. That these regulations shall take effect as from the first day of Hilary Term, 1864.

The above regulations were sanctioned and confirmed by orders of the several societies, as under-mentioned:—

MIDDLE TEMPLE, 18th December, 1863.

GRAY'S-INN, 18th December, 1863.

LINCOLN'S-INN, 22nd December, 1863.

INNER TEMPLE, 22nd December, 1863.

Mr. Serjeant Ballantine has received a patent of precedence.

We have to record the decease of B. Combe, Esq., police magistrate for Southwark. Mr. Combe was in the seventy-fifth year of his age, and was called to the Bar by the Hon. Society of Lincoln's Inn in 1813. According to *The Times*, E. H. Woolrych, Esq., police magistrate at the Thames Police Court, will succeed Mr. Combe at Southwark, and J. Paget, Esq., of the Northern Circuit, will succeed Mr. Woolrych.

Court Papers.

EQUITY CAUSE LISTS, HILARY TERM, 1864.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

Mortimer v. Picton (Part hd.)
L. C.
Jones v. Elborough (R., *July*
17, 1861) *L. J.*
Bell v. Johnson (W., *Dec.* 17,
1863)
Cresswell v. Dewell (S., *Dec.*
18)
Mason v. Broadbent (R., *Dec.*
19)

Rackham v. De la Mare (S.,
Dec. 23)
Swaine v. Great Northern
Railway Co. (W., *Dec.* 24)
CAUSES.
Baxendale v. West Midland
Railway Co. (M D, part
heard) *L. C.*
Beadmores v. Tredwell (M D)
L. C.
Carew v. Cooper (M D, Ap
M) *L. J.*

Shorey v. Hayward (M D)
Bradley v. Hallam (F C)

Shaw v. Bunney (Cause)
Newall v. Pike (M D).

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

CAUSES, &c.

Robinson v. Brocklebank (D)	Shrubsole v. Schnei-der	} Trial by jury
Dillon v. Ashwin (M D)	Schneider v. Shrubsole	
Alston v. Orme (M D)	Adams v. Atherley (M D)	
Hare v. Pryce (M D)	Dawes v. Chadwin (Cause)	
Buckeridge v. Whalley (Re-hearing)	Baker v. Machin (F C)	
Buckeridge v. Whalley (F C)	Ranking v. Barnes (F C, Summons to vary)	
Green v. Gascoyne (F C)	Keenan v. Handley (Cause)	
Edwards v. Burke (M D)	In re Sutton's Estate	} (F C, adj. chamb.)
Robins v. Reeve (M D)	Sutton v. Rees	
Chadwick v. Chadwick (M D)	Parton v. Parton (F C)	
Kelsey v. Read (M D)	Stronach v. Unthank (M D)	
Deakin v. Spittle (Cause)	Rackstrow v. Meacher (F C)	
Bush v. Haleshap (M D)	Shattock v. Rabon (Sp C)	
Merriman v. Bonney (M D)	Salisbury v. Churchill (M D)	
Hoare v. Osborne (F C)	Larmuth v. Wilkin (Cause).	
Watson v. Hanbury (F C)		
King v. King (F C)		

Before the Vice-Chancellor Sir JOHN STUART.

CAUSES, &c.

Spargo v. Williams (D)	Secretary of State in Council for India v. Kelson	} (F C)
Pile v. Marwood (D)	Macnaghten v. Smith	
Thornton v. Ramsden (M D)	Goodwin v. Braine (F C, Sums)	
Staniland v. Seaton (M D)	Brandreth v. Brandreth (F C)	
Willson v. Featherstone (F C)	Selby v. Bowie (F C)	
West v. Borrett (M D)	Williams v. Headland (F C)	
M'Donald v. Richardson	Merryweather v. Jones (M D)	} (F C)
Richardson v. Martin	Elliott v. Browne (F C)	
Michell v. Hocking (M D)	Spiro v. Willows (Cause)	
Shaw v. Mitchell (M D)	Tennant v. Tennant (Cause)	
Trail v. Baring (M D)	Croxford v. Elliott (F C)	
Dickson v. Dickson (M D)	Price v. Mulcock (F C)	
Arnold v. Burrell (M D)	Adams v. Williams	} (F C)
Menday v. Cripps (F C)	Crisp v. Williams	
Shafto v. Adams (Cause)	Harris v. James (M D)	
Bellin v. Salmon (Cause)	Hollingsworth v. Heathcote	} (M D)
Setchfield v. Barnby (F C)	Johnson v. Stavert (M D)	
Skelton v. Arnold (F C)	Danby v. Poole (F C)	
Ross v. Dean (F C)	Bortoft v. Wadsworth (F C)	
Jones v. Casson (Cause)	In re Dowler	} (F C, from chambers, Summons)
Copland v. Price (F C)	Dowler v. Bea-man	
Thorpe v. Mattinson (M D)	Lawless v. Thunder (M D)	
Moore v. Browne (F C, M)	Soddy v. Searle (M D)	
Lowndes v. Norton (M D)	Jones v. Powell (M D)	
Howe v. Howell (Cause)	Keats v. Hewer (M D)	
Woodburne v. Settle (F D)	Brooke v. Hickes (M D)	
Settle v. Burns (F C)	Robertson v. M'Alpine (F C)	
Roxby v. Sisson (M D)	In re Brooke's Settlement	} (Ptn of right)
Burlton v. Griffiths (M D)	Petition of R. Harding & ors.	
Small v. Taylor (F C)	Cade v. Newton (F C)	
Rhodes v. Liscombe (Cause)	Anisley v. Cannan (M D)	
Fray v. Drew (Cause)	Pavey v. Pavey (M D)	
Pearson v. Hofman (F C)	Cross v. Clifford (M D)	
Jones v. Chapman (F C)	Ingham v. Ingham (M D)	
Williamson v. Sanderson (M D)	Archer v. Alp (M D)	
Butler v. James (M D)	Buchanan v. Percy (M D)	
Hill v. South Staffordshire Railway Co. (Cause)	Hutchison v. Holmes (M D)	
Margitson v. Hall (F C)	Walker v. Kenrick (M D)	
Coppard v. Allen (Cause)	Dames v. Ward (Cause)	
Locking v. Power (F C)	Ihler v. Davies (F C, Ptn in Daveson v. Battine)	
In re Elliot	Riches v. Cook (F C)	
Llewellyn v. Edwards	Weir v. Weir (M D)	
Parkin v. Gummersall (M D)	Prowett v. Prowett (M D)	
Adams v. Evan (F C)	Malpas v. Peake (M D)	
Elliott v. Ince	Clark v. Clark (M D)	
Elliott v. Ince		
Baillie v. Baillie (Cause, P C, Ptn)		

Before the Right Hon. the MASTER OF THE ROLLS.

CAUSES, &c.

Waterhouse v. Cheesman (M D)
Clark v. Eversfield (M D)
Earnshaw v. Bradbury (M D)
Boyd v. Radcliffe (M D)
Hearn v. Caffary (M D)
Parton v. Parton (M D)
Ormerod v. Rostron (F C)
Davidson v. Chalmers (M D)
Markwell v. Bull (M D)
Greenough v. Shorrocks (MD)
Spittle v. Hughes (M D)
Hardy v. Caley (M D)
Harrison v. Cole (Trial by jury) *Jan.* 18
North-eastern Railway Co. v. Bray (M D)
David v. Jones (Cause)
Turner v. Helgin (M D)
Aylward v. Shrimpton (Cause, part heard)
Braithwaite v. Kearns (M D)
Walrod v. Earl Rosalyn (Cause)
Peppercorne v. Wilks (M D)
Charles v. Gill (Cause)
Terrett v. Gardner (M D)
Cotterill v. Cobbold (M D)
Brooke v. Lord Mostyn (Cau.)
Hendrick v. Wood (M D)
Brown v. Simpson (M D)
Shorting v. Cobbold (M D)
Mackintosh v. Steuart (Cau.)
Gaby v. Gaby (F C, Summons to vary)
Arnold v. Tanton (M D)
Brooke v. Morison (M D)
Payne v. Caistor (Cause)
Kingsbury v. Rhodes (M D)
Edwards v. Jones (M D)
Cole v. Scott (M D)
Turner v. Turner (M D)
Hogg v. Jones (F C)
Fennell v. Greenorex (Cause)
Foster v. Foster (M D)
Quentery v. Quentery (Sp C)
Gibbon v. Campbell (M D)
Pegler v. White (M D)
Jones v. Cooke (M D)

Wilcoxon v. Sturgis (M D)
Levilly v. Parker (M D)
Hopkinson v. Lusk (Sp C)
Fletcher v. Green (Cause)
Langley v. Parkyn (F C)
Revett v. Southampton, &c. Steam-boat Co. (Limited) (M D)
Simpson v. Watts (M D)
Reeves v. Matthews (M D)
Prickett v. Jackson (M D)
Weir v. Freshfield (M D)
Buckingham v. Whitta (M D)
Pearman v. Pearman (F C)
Phear v. Daniel (Cause)
Edmonds v. Lord Foley (F C)
Att.-Gen. v. Fytche (M D)
Phillips v. Edwards (M D)
Symonds v. Wilkes (Cause)
Markwell v. Markwell (M D)
Christie v. Johnstone (M D)
Lysaght v. Westmacott (M D)
Dyott v. Napier (Cause, cross-examination of witnesses) *Jan.* 29
Wedderburn v. Green (M D)
Dutton v. Latham (M D)
Wright v. Youngs (Cause)
Cusack v. Udale (M D)
West v. Rackstraw (F C)
Sandford v. Ballard (M D)
Cook v. Cook (M D)
Jones v. Jones (F C)
Baker v. Monk (Cause)
Bird v. Maybury (F C)
Gamble v. St. Helens Canal and Railway Co. (M D)
Tarver v. Christall (Cause)
Padwick v. Hawkins (F C)
Welchman v. Nokes (M D)
Simpson v. Brown (M D)
Turner v. Sutcliff (M D)
Green v. Rowan (Cause)
Curtiss v. Grant (M D)
May v. May (F C)
Maw v. Pearson (F C)
Smith v. Cunningham (Cause)
Countess of Harrington v. Sir Wm. Atherton (M D)

Sporle v. Barnaby (Cause)
 Jamieson v. Chater (M D)
 Banner v. England (Cause)
 Cumming v. Macpherson (M D)
 Scholey v. Lee (Cause)
 Corner v. Okey (M D)
 Franckum v. Harford (F C)
 Lee v. Lee (F C)
 Gaskoin v. Millward (M D)
 In re Whitehead (F C)
 Godfrey v. Whitehead (from chancery)
 Riddell v. Smith (Cause)
 Lee v. Hamerton (M D)
 Harker v. Simpson (F C)

Garnons v. Garnons (Cause)
 Adams v. Hebden (Cause)
 Curtis v. Graham (M D)
 Garner v. Garner (M D)
 Beasley v. Attenborough (M D)
 Cooksey v. Foot (M D)
 Kelsey v. Kelsey (M D)
 Bartley v. Bartley (Sp C)
 Tiffin v. Parker (Cause)
 Wroe v. Seed (F C)
 Newmarch v. Dodd (M D)
 Smith v. Casse (M D)
 Poole v. Beddall (F C)
 Graham v. Gibsons (M D)
 Hooper v. Strutton (M D)

Before the Vice-Chancellor Sir W. P. Wood.

CAUSES, &c.

Lowndes v. Garnett & Mosely
 Railway Co. (M D)
 Marriott v. Marriott (F C)
 Smale v. Torr (M D)
 Earl of Bessborough v. Earl of Coventry (M D)
 Louis v. Louis (Sp C)
 Foxen v. Foxen (F C)
 Chartered Mercantile Bank of India, London, and China v. De Jonge (Cause)
 Parsons v. North (M D)
 Tompsett v. Harmer (F C)
 Foster v. Gladstone (M D)
 Flockton v. Peake (Cause)
 River Fergus Navigation and Embankment Co. v. Cahill (M D)
 Attorney-General v. Sittingbourne and Sheerness Railway Co. (M D, pt hd)
 Merton v. Myers (M D)
 Theyer v. Tombs (Cause, trial by jury)
 Att.-Gen. v. Metropolitan Board of Works (M D)
 Beckitt v. Field (M D)
 Reeves v. Adams (M D)
 Kitchen v. Humble (Cause)
 Att.-Gen. v. Boyle (M D)
 Billing v. Billing (F C)
 Webster v. Webster (M D)
 Moses v. Calvert (M D)
 Rees v. M'Kewan (M D)
 Lord v. Company of Proprietors of the Rochdale Canal (M D)
 Aldebert v. Leaf (M D)
 Sichel v. Raphael (Cause)
 Holmes v. Prescott (F C)
 Jones v. Frewin (F C)
 Jones v. Jones (F C)

Richardson v. Spark (M D)
 Harries v. Harries (F C)
 Mostyn v. Mostyn (M D)
 Pare v. Rolling Stock Co. of Ireland (Limited) (M D)
 Wason v. Bridges (M D)
 Woodward v. Huggins (M D)
 Clubb v. Harris (F C)
 Edwards v. Wickwar (F C)
 Godwin v. George (Cause)
 Bates v. Williamson (Cause)
 Sidebottom v. Sidebottom (M D)
 Ludlam v. Ludlam (M D)
 Johnson v. Johnson (M D)
 Lewis v. Leaf (M D)
 Cook v. Kemp (Cause)
 Cocker v. Hepworth (M D)
 Moya v. Gray (Cause)
 Furley v. Hyder (F C)
 Stacey v. Lloyd (M D)
 Williams and two other suits v. Jackson (F C)
 Michell v. Stephenson (F C)
 Tynte v. Randolph (Cause)
 Ford v. Sir J. V. Shelley, Bart. (Cause)
 Knocker v. M'Kewan (M D)
 Phillips v. Governor and Company of the Bank of England (Cause)
 Daniell v. Helder (M D)
 Solomon v. Honeywood (Cause)
 Hand v. King (Cause)
 Hand v. Sturt (Cause)
 Orton v. Napper (M D)
 Mason v. Hankey (M D)
 Kay v. Johnson (Cause)
 Partridge v. Partridge (F C)
 Edwards v. Normandy (M D)
 Paul v. Leaf (M D)
 Simpson v. Brown (M D)

On the first day of Hilary Term, while the four judges of the Queen's Bench were sitting, Mr. Justice Shee, the newly appointed judge, came into court and took the usual oath of allegiance, under the 21 & 22 Vict. c. 48, and also the oath required to be taken by Roman Catholics under the 10 Geo. 4, c. 7, commonly called "The Catholic Emancipation Act."

The union of the "National Association for the Promotion of Social Science with the Society for Promoting the Amendment of the Law," has been effected. The meetings of the joint body will be held for the future at the rooms hitherto occupied by the latter Society, at No. 3, Waterloo-place, Pall-mall. At the last meeting of the Society for Promoting the Amendment of the Law, previous to its junction with

the other Society, W. T. S. Daniel, Esq., in the chair, the minutes of the last meeting were read and confirmed. A paper was read by Mr. Edward Webster, on "The System of Preparing, Editing, and Publishing Cases argued and determined by the Superior Courts, in connexion with a Minister and Department of Public Justice to be established by the Legislature." Mr. Edgar moved that the paper be printed and circulated among the members. Mr. Pulling seconded the motion, which was carried unanimously.

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N O T I C E.

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THE JURIST.

LONDON, JANUARY 23, 1864.

WE read in the papers, that Lord Henry Lennox has sent a notice for insertion in the books of the House of Commons, that he will, on an early day after the meeting of Parliament, "call the attention of the House to the present mode of administering the laws which affect capital punishment, and to the circumstances under which the Crown has on various occasions been advised to exercise the royal prerogative of mercy." We hope that this statement is correct, and if it is, that his Lordship will proceed with his motion, in which it is impossible not to wish him success. The time has come when the numerous extraordinary exercises of this noble prerogative, a prerogative which of all others requires to be exercised with the greatest possible judgment and merciful discrimination, that have perplexed the public mind for so many years, should be thoroughly inquired into, and the principle—if, indeed, there is any principle—by which our rulers are guided in the matter, be distinctly explained. The cases of Celestina Sommers and Dr. Smethurst, in England, Jessie McLachlan, in Scotland, Mr. Kirwan, in Ireland, &c., are in the recollection of everybody. But a case of recent occurrence has even more pointedly aroused attention.

We allude to the case of George Victor Townley, which we have deferred noticing until all the facts were fairly before the public; for it has been the misfortune of this case, as of many others, to be discussed piecemeal, on partial and inaccurate representations. We are now in a condition to narrate it in a connected form.

George Victor Townley was convicted for murder at the recent Winter Assizes of Derby, and left for execution. The defence rested on the insanity of the accused, and no objection is made, either to the correctness of the law on that subject, as laid down by the judge, or to the verdict of guilty returned by the jury. But Martin, B., before whom the case was tried, addressed a letter to Sir George Grey, the Secretary of State for the Home Department, in which he says—

"The conviction was, in my opinion, right; but Mr. Forbes Winslow and Dr. Gisborne were examined at the trial, and both deposed in the strongest manner that the prisoner is now of diseased mind, and absolutely insane. I think it right to call your attention at once to the subject, with a view to a correct opinion being formed as to the propriety of his execution."

The Dr. Gisborne here referred to was the surgeon to the Derby County Gaol from the 24th August, 1863, the day on which Townley entered the prison, to the present time. In answer to an inquiry from the Home Secretary as to his own opinion relative to the sanity or insanity of the condemned man, the learned baron replied—

"I cannot say that I have formed any decided opi-

nion upon the point. The demeanour of the prisoner afforded me no means of arriving at one. He sat during the trial with his head depressed; I scarcely once saw his countenance; and he never spoke. I would not be justified in saying, that the evidence of Mr. Forbes Winslow and Dr. Gisborne is not correct; but I certainly think, and have thought ever since the trial, that there ought to be further inquiry."

In consequence of these suggestions, the Secretary of State, on the 23rd December, addressed, through his under secretary, a communication to the Commissioners in Lunacy, in which he says—

"Sir George Grey is of opinion that the verdict of the jury, in which Mr. Baron Martin, who presided at the trial, concurs, and which appears to Sir George Grey, from the evidence, to have been right, decides the question as to the sanity of the prisoner at the time when the crime was committed. The only question, therefore, on which any doubt exists, and upon which, in the opinion of the judge, there ought to be further inquiry, is, whether the prisoner is now insane."

"It is to be regretted that this question was not raised before the trial, when it could have been submitted to a jury; but, under the actual circumstances, Sir George Grey requests that the Commissioners in Lunacy will be so good as to undertake the inquiry recommended by Mr. Baron Martin, and report to me their opinion, for his information, whether or not the prisoner is at the present time of unsound mind."

The Commissioners in Lunacy undertook the inquiry, and on the 28th December reported as follows:—

"The result of the examination of the officials of the prison, of which the detail will be found appended to our report, may be stated briefly as in effect establishing, without dispute, that there has been substantially no change in the prisoner's mental state since the trial; that such difference or alteration as may have been noted has been an improvement; and that he has been altogether more at ease, more resigned, and at times even cheerful, since the sentence was passed upon him. Not at any time since he was first brought to the gaol, according to the testimony of all who have had the means of watching him closely, does he appear to have been more rational than he is at present."

"In the endeavour to form a satisfactory opinion as to his existing mental state, we have found it impossible to exclude the consideration of what his mental condition had been during the entire period of his imprisonment. What it is now it has been throughout; and the detail of what was elicited from him at our interviews, appended to this report, is probably sufficiently ample to enable the Secretary of State to form an opinion for himself as to the prisoner's moral condition, the views entertained by him of the murder he committed, the motives that impelled him to it, and the reasons by which he justifies it. We have to remark, that, generally his manner during these interviews, with one or two exceptions which we have noted, was remarkably calm, quiet, and self-possessed; and though he seems to have had no difficulty in at once, from the questions put to him, correctly inferring

the object and drift of our examination, we saw not the least grounds for suspecting him of any intention to mislead us by putting on a manner not natural to him, or feigning what he did not feel.

"In view of the extravagant opinions thus deliberately professed by him, of his extraordinarily perverted moral sense, and of the hereditary taint alleged, and apparently proved, to have existed in the family of the prisoner's grandmother, we cannot consider him to be of sound mind; but his views of right and wrong, false as they are, appear to have been coherently acted upon, and with a full sense of what they involved. He reasons now, as he acted in committing the murder. Upon the point of his alleged belief in a conspiracy against him we pressed him very closely; but we could not satisfy ourselves that this was in the nature of a delusion. It seems certain that some members of the deceased's family objected to his engagement with her, while others favoured it, or were indifferent; and that the former had obtained an influence over her some little time before her letter was written, which was meant finally to put an end to it. Hence he believed that she had been acted upon by a conspiracy, which was meant 'in the tenderest point' to injure him; and all the questions which we put upon this part of the case failed to draw from him anything that could bear other construction than that he had taken a disordered and morbid view of an actual occurrence.

"Being of opinion, therefore, that the prisoner continues to be now in the same mental state as when he committed the murder and underwent his trial, we think, that, applying the law as laid down by Mr. Baron Martin to this case, the prisoner George Victor Townley was justly convicted.

"W. G. CAMPBELL.

"JAMES WILKES.

"JOHN FORSTER."

Although this report of the Commissioners is somewhat long and somewhat deficient in distinctness, and upon the whole gives an uncertain sound, it amounts, in substance, to saying that the conviction of Townley ought not to be disturbed, in which opinion, as already seen, both the Home Secretary and Baron Martin concur.

In the meantime, however, other machinery was at work to rescue the condemned man from the hated grasp of the law. On the 27th December, 1863, a certificate was drawn up, and afterwards presented to Sir G. Grey, signed by three justices of the peace (one for the county, and two for the borough of Derby) and two medical men, stating, in the terms required by law, that they had examined and inquired into the mental state of the prisoner, and certifying that he was insane. This was followed by a certificate to the same effect, dated the 29th December, and signed by two justices of the peace for the county of Derby (one of them being the same who had signed the former certificate), and the same two medical men.

On receipt of their certificate, Sir G. Grey, considering that the stat. 3 & 4 Vict. c. 54, s. 1, left him no discretionary power in the matter, ordered Townley to be transferred to a lunatic asylum until he shall recover his reason.

This raises a question, the importance of which it is difficult to overrate, namely, is the language of that statute merely permissive, or is it compulsory on the Secretary of State?

The words of the 3 & 4 Vict. c. 54, s. 1, are as follows:—"If any person, while imprisoned in any prison or other place of confinement under any sentence of death, transportation, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour or to keep the peace or to answer a criminal charge, or in consequence of any summary conviction or order by any justice or justices of the peace, or under any other than civil process, shall appear to be insane, it shall be lawful for any two justices of the peace of the county, city, borough, or place where such person is imprisoned to inquire, with the aid of two physicians or surgeons, as to the insanity of such person; and if it shall be duly certified by such justices and such physicians or surgeons that such person is insane, it shall be lawful for one of her Majesty's Principal Secretaries of State, upon receipt of such certificate, to direct, by warrant under his hand, that such person shall be removed to such county lunatic asylum, or other proper receptacle for insane persons as the said Secretary of State may judge proper and appoint; and every person so removed under this act, or already removed or in custody under any former act relating to insane prisoners, shall remain under confinement in such county asylum or other proper receptacle as aforesaid, or in any other county lunatic asylum or other proper receptacle to which such person may be removed, or may have been already removed, or in which he may be in custody by virtue of any like order, until it shall be duly certified to one of her Majesty's Principal Secretaries of State, by two physicians or surgeons, that such person has become of sound mind, whereupon the said Secretary of State is hereby authorised, if such person shall still remain subject to be continued in custody, to issue his warrant to the keeper or other person having the care of any such asylum or receptacle as aforesaid, directing that such person shall be removed back from thence to the prison or other place of confinement from whence he or she shall have been taken, or, if the period of imprisonment or custody of such person shall have expired, that he or she shall be discharged."

This section only says, "it shall be lawful" for the Home Secretary, on receipt of such certificate, to direct the removal of a prisoner to a lunatic asylum; it neither contains negative words, nor uses the expression, "he is hereby required to do so," or language to that effect.

The following are the rules observed in the construction of statutes in this respect:—2 Dwarria on Statutes, 712—"Words of permission shall in certain cases be obligatory. Where a statute directs the doing of a thing for the sake of justice, the word *may* means the same as *shall*. The stat. 23 Hen. 6, c. 10, says, the sheriff &c., may take bail; but the construction has been, that he shall be bound to bail." [This dictum is to be found in many of the books, but its foundation fails, for the words of the statute are "*les ditz vis-*

counts, &c., *lessevent* hors du prison tous maners des personnes, &c., sur reasonable suerta, &c." . . .] "So, if a statute says, that a thing *may* be done which is for the public benefit, it shall be construed that it *must* be done." P. 713. "Statutes are also sometimes only directing what is to be done, at other times compulsory; that is, according to their provisions, discretionary or imperative." P. 715. "Negative words *will* make a statute imperative; and it is apprehended affirmative *may*, if they are absolute, explicit, and peremptory, and shew that no discretion is intended to be given."

Broom's *Maxims*, 173, 3rd ed.:—"Argumentum ab inconvenienti plurimum valet in lege." (Co. Litt. 66. a.) "In doubtful cases, arguments drawn ab inconvenienti are of great weight. Thus, arguments of inconvenience are sometimes of great value upon the question of intention. If there be in any deed or instrument equivocal expressions, and great inconvenience must necessarily follow from one construction, it is strong to shew that such construction is not according to the true intention of the grantor; but where there is no equivocal expression in the instrument, and the words used admit only of one meaning, arguments of inconvenience only prove want of foresight in the grantor. . . ." P. 175. "In construing an act of Parliament, the same rule applies. If the words used by the Legislature, in framing any particular clause, have a necessary meaning, it will be the duty of the Court to construe the clause accordingly, whatever may be the inconvenience of such a course. Where a statute is imperative, no reasoning ab inconvenienti should prevail. But, unless it is very clear that violence would be done to the language of the act by adopting any other construction, any great inconvenience which might result from that suggested, may certainly afford fair ground for supposing that it could not be what was contemplated by the Legislature, and will warrant the Court in looking for some other interpretation."

Now, what are the words in the section before us to shew that the directory language in it should be understood in a peremptory sense; or what is the evil to be avoided by putting that interpretation upon it. Far from this, we see great inconvenience the other way; for the construction of the legal advisers of the Home Secretary must go this length—that so long as the certificate is in form, he is bound by its statements, even though he should himself believe them false. More than this. The certificate must be signed by two justices of the peace and two medical men. Suppose fifty justices of the peace and fifty medical men were to state their conviction to the contrary, still the Secretary of State must act on the certificate. Or, suppose the certificate of insanity, although in legal form, is founded on an illegal reason (a thing in the actual case by no means improbable), e. g. that the parties signing it disliked capital punishment, or that they believed that, although perfectly conscious of the difference between right and wrong, the prisoner laboured under irresistible impulse to crime, the Secretary of State is still bound to act on the certificate. That the Legislature did not intend this is palpable, and the only question is, whether, by the unskilful

use of language, they have placed on the statute-book an enactment open to so monstrous an interpretation. In any event, a declaratory statute ought to be passed on this subject without a moment's delay.

We have hitherto proceeded on the assumption of bona fides, discretion, impartiality, and absence of prejudice on the part of the justices of the peace and the medical witnesses who depose to the insanity of the prisoner. Let us see how this stands in the case before us. The inquiry into Townley's sanity was started by Martin, B., in consequence of evidence to that effect given by Dr. Winslow and Dr. Gainsford. The latter has published a singular letter, in which he avows, that on Townley's first entrance into the prison, he was impressed with the belief that "he was sound in mind and body."

"From all that I saw and heard I was sorely perplexed as to the true state of his mind. Sometimes I thought he was insane. Again I thought he was sane. In this difficulty I remained till the assizes approached. Mr. Leech called on me a fortnight before the trial. I told him that I was desirous of having nothing to do with either the prosecution or defence; that I could only state to the jury what I had observed; and that I considered Townley suffered from a morbid condition of mind. Some days afterwards I had a consultation with Dr. Hitchman, and our joint opinion was, that no case of legal insanity could be established, and that an intelligent jury would be certain to find him guilty. About this time Dr. Forbes Winslow, a great authority in lunacy, saw Townley, and reported on his case. This I read carefully. Dr. Winslow had no doubt that Townley's delusions and statements emanated from organic brain mischief—that he was insane. I put all these varied and accumulated facts, opinions, &c., together, and after balancing the evidence before me, and endeavouring to give a mature and impartial judgment, I came to the conclusion, through the portals of doubt, that Townley was of unsound mind. . . . Almost till going into the witness-box I was undecided as to the opinion I should give. I told Mr. Leech I should be guided much by what transpired in court." The other witness is Dr. Winslow, whose opinions on the subject of insanity are well known. The following are some of them, which are taken from a paper read by him before the Juridical Society. (See its transactions, vol. 1, p. 617):—

"Before I proceed to the consideration of homicidal monomania, and to those morbid states of alleged criminal irresponsibility connected with what are termed blind and irresistible impulses, I would premise that I have always taken exception to these phrases; I think they are unfortunate and unhappy nosological designations of admitted and accepted states of mental disorder associated with a desire to destroy life.

"The terms 'homicidal monomania,' 'blind and irresistible impulse,' are, I admit, open to grave objections, and to serious abuse. Of the existence of a type of insanity without delirium or apparent delusion, suddenly manifesting itself, and impelling its miserable victims to destroy those nearest and dearest to them, there cannot be a question. There are other cases (and such will be found in most lunatic asylums) in which the mind of the patient appears to be absorbed with one horrible homicidal idea, that being the predominant and characteristic symptom of the mental alienation. A case is recorded in a French journal of a man whose state of mind was made the subject of judicial investigation in France, who for twenty-six years was haunted by an intense desire to destroy human life. He freely

confessed that his mind had for this long period been absorbed in this *one idea*."

"In many conditions of disordered brain and mind, the patient suffers acutely from these 'resisted' impulses and morbid mental suggestions. This is one of the most distressing types of nervous and mind disorder coming within the range of the physician's observation and treatment. In many cases, the unhappy patient is fully and painfully conscious of his morbid condition of thought; and it occasionally happens that so acute is the agony of mind consequent upon the struggle to conquer these suggestions, that relief is sought for in suicide. In this stage of consciousness the patient is occasionally able to appreciate that his sensations are perverted, his thoughts morbid, perceptions false, and his impulses wrongly directed.

"Dr. Rush refers to the case of a lady, who prayed fervently that she might be relieved from the horror of her own morbid thoughts by a complete loss of reason!" (P. 625).

"All crime is alleged to spring from an unresisted and uncontrolled impulse; and a distinguished judge once declared from the bench, when reference was made to the subject of morbid irresistible impulses, that it was one of the objects of punishment to teach men, viciously and criminally disposed, the duty and necessity of restraining their wicked inclinations and impulses. No one doubts the correctness of this principle. But surely it is unphilosophic not to draw a right distinction between a *normal* and *healthy* disposition to crime, and those occasionally resisted, and often unhappily irresistible, tendencies to what the law considers wicked, vicious, criminal, and punishable acts, clearly connected with, and originating in, a *pathological* condition of the material instrument of thought disordering the mental operations. Was not this distinction entirely lost sight of when Lord Hale committed himself to the dogma, that 'all crime was partial insanity?' and did not a non-recognition of this great principle lead Dr. Haslam to declare, that no mind was sound except that of the Deity? There are *insane* impulses, and *healthy* impulses, to crime and vice; and I think no person acquainted with the phenomena of diseased mind would confound one condition with the other.

"A person may, with the object of obtaining some great pecuniary compensation, set fire to his house. Another man, with no possible chance or hope of advantage or gain, does the same thing under the influence of an insane impulse. A mother murders her child to destroy all evidence of her moral delinquency; another woman sacrifices the life of her offspring to which she is tenderly attached, under the terrible dominion of morbid desire to destroy. A person in a drunken brawl quarrels with his wife because she refuses to supply him with intoxicating drink, and ends by destroying her life. Another man, he may be a devoted, affectionate, and loving husband, without exhibiting any previous evidence of insanity, being seized with an attack of homicidal frenzy, rushes upon his wife and cuts her throat! A man may enter a shop and purloin some article of value. Another person, moving in good society, and of high and unimpeachable integrity, and above want, may, in a state of mental disorder, commit a similar offence, conscious at the time of the certainty of detection, disgrace, ruin, and punishment. One man practises his profession as a thief—it is his vocation; the other person commits a motiveless crime under the influence of a morbid, insane, and irresistible impulse. I readily admit that such cases require to be most jealously

scrutinised. I do not, however, think there can be much practical difficulty in diagnosing and discriminating judiciously between the two classes of cases.

"To divert, however, to the subject of resisted insane impulses.

"Patients often complain of being subject to this type of mental disorder, and feel the necessity for restraint and medical treatment. The suggestion to self-destruction and commission of homicide, without any other evidence of insanity in the popular acceptance of the term, is a common symptom of disorder of the brain and nervous system. The patient, in describing his mental state to his physician, says that the suggestion is, 'cut your throat,'—'poison—drown yourself,'—'cut your wife's throat,'—'murder your child,'—'poison him.' Persons in this state of mind (notwithstanding the presence of great disturbance of the functions of the brain and disorder of the general health) are able to resist, for a period, these insane suggestions and impulses; but if they should yield to them, and the suggestion be an *irresistible* instead of a *resisted* one, what would Mr. Stephen's opinion be of their legal responsibility in relation to any offence they might commit?" (Pp. 626-628).

"I may be asked, what principle I would propound for the guidance of courts of law in these cases. I cannot but repeat what I have already declared to be my conviction, that in *every criminal case where the question of responsibility arises in the course of judicial inquiry, if it be possible to establish any degree of positive insanity, it should always be viewed as a valid plea for a considerable mitigation of punishment, and as prima facie evidence in favour of the prisoner; and in no case where insanity clearly exists (without regard to its nature and amount) ought the extreme penalty of the law to be inflicted.*

"What, I may be asked, is my test of insanity? I have none. I know of no unerring, infallible, and safe rule or standard applicable to all cases. The only logical and philosophic mode of procedure in doubtful cases of mental alienation, is to compare the mind of the lunatic at the period of his suspected insanity with its prior natural and healthy condition: in other words, to consider the intellect in relation to itself and to no artificial *a priori* test. Each individual case must be viewed in its own relations. It is clear that such is the opinion of the judges, notwithstanding they maintained as a test of responsibility a knowledge of right and wrong. Can any other conclusion be drawn from the language used by the judges when propounding in the House of Lords their view of insanity in connexion with crime? 'The facts,' they say, 'of each particular case must of necessity present themselves with *endless variety and with every share of difference in each case*; and as it is their duty to declare the law upon each particular case, upon facts proved before them, and after hearing arguments of counsel thereon, they deem it at once *impracticable, and at the same time dangerous to the administration of justice, if it were practicable, to attempt to make minute applications of the principles involved in the answers given by them to the questions proposed.*' This is a safe, judicious, and philosophic mode of investigating these painful cases; and if strictly adhered to, the ends of justice would be secured, and the requirements of science satisfied." (Pp. 632, 633).

If the criminal classes of the community do not avail themselves of the hint afforded by this case as to the means of escaping the consequences of their misdeeds, they do not possess the intelligence for which credit is commonly given them.

It has often occurred to us, that the principle by which the damages in an action for slander are governed is a very unsatisfactory one, and requires the consideration of a court of error. In the case of *Parkins v. Scott* (31 L. J., Ex., 331; 8 Jur., N. S., part 1, p. 593), it was laid down, that where the words are only actionable by reason of special damage, a defendant is not liable for any damage caused by the unauthorised repetition of them to third persons. This decision was based upon the previous case of *Ward v. Weeks* (7 Bing. 211), by which the Court felt themselves bound.

Now, it is clear, that, upon this principle, a man may often be unprotected against the actual damage which the slander creates; and it seems to us, that the rule is inconsistent with the nature of the action, which is based upon the tendency of men, including, of course, the ladies, to repeat to others what they have heard themselves. The "fama malum quo non aliud velocius ullum," is circulated, as it can only be, by the tongue or the pen, and the worse the report the more likely, we all know, it is to be so circulated. Moreover, this rule of limiting the damages seems to be inconsistent with the law, by which actions may be maintained for words which are actionable in themselves, without any proof of special damages; and why? Not because it is assumed that the damage would be caused by the words being originally spoken in the presence of one or more person or persons, but because it is assumed that the words will be repeated by those persons. Thus, to cite one of many cases; in the case of *Evans v. Harris* (26 L. J., Ex., 31), Williams, J., allowed evidence to be given of a general loss of custom by the plaintiff—a baker—although he would not allow him to prove the loss of any particular customers, as there was no special damage laid in the declaration; and the Court upheld this ruling. Now, this general loss of custom must have been caused by the repetition of the slander by the original hearers. If they had not repeated it the customers could not have heard it, for there is no authority for assuming against the defendant that he had uttered the words to other persons. He is liable for what is proved, and no more.

The case of *Parkins v. Scott* and the previous decisions upon which it is founded, appear also to be in conflict with other cases. For instance, one head of special damage is the loss of hospitality. Now this damage has not, so far as we are aware, been limited to a loss sustained at the hands of the person who heard the slander uttered: it has been extended to the case of others who heard it repeated, and excluded the plaintiff from their houses. The precedents are framed upon this assumption.

We must, therefore, venture to think that these cases of *Ward v. Weeks* and *Parkins v. Scott* require some further consideration. There is an old Persian proverb, which Anglicised, is, "Of thy *unspoken* word thou art master, but thy *spoken* word is master of thee:" that is,—A man can never tell the consequences which will ensue to others, and for which he must be liable, of words maliciously and rashly uttered. If a man is only to be liable for the damage which the persons who first hear them can cause to the person of whom they are spoken, in many cases probably that damage will be nominal, while the slandered person,

however seriously damaged, will be unable to trace them from speaker to speaker, and will practically be without redress.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—I submit to you the following form of condition, as an answer to the challenge given in your number of the 19th December last:—

"THE CONDITION of the above-written obligation is such, that if the said A. B., his heirs, executors, or administrators, shall pay to the said C. D., his executors, administrators, or assigns, the sum of 3000*l.*, by three equal instalments, in manner following—that is to say, the sum of 1000*l.* on the 1st day of June next, the sum of 1000*l.* on the 1st day of December next, and the sum of 1000*l.* on the 1st day of June, 1865; or in case any of such instalments shall not be punctually paid on the day hereinbefore appointed for the payment thereof, shall, before any action or suit on the above-written obligation shall have been commenced, pay to the said C. D., his executors, &c., the amount of the instalment so in arrear, together with interest at the rate of 6*l.* per cent. per annum thereon from the day on which such instalment ought to have been paid, up to and inclusive of the day on which the same shall actually be paid, then the above-written obligation shall be void, but otherwise shall be of full force and effect."

A consideration of this form will shew, that if an action were brought on the bond, commenced (say) on the 1st July next, the obligor could not escape judgment being recovered against him for the penalty, unless he proved, *either* (first) that he had paid 1000*l.* on the 1st June, *or* (secondly) that on some subsequent day of June—say the 21st—he had paid 1000*l.*, together with twenty days' interest at 6*l.* per cent.

Your obedient servant,
O. L.

THE LORD CHANCELLOR AND THE "AUTHORISED" REPORTS.

THE following dialogue took place in the Lord Chancellor's Court on Wednesday, the 13th instant:—
Counsel being about to refer to a case of *Ex parte Matheson*, stated that it was not reported in the authorised reports.

LORD CHANCELLOR.—I do not know what are the "authorised" reports.

Counsel.—I mean the reports which are understood to have the authority of the Court for their accuracy.

LORD CHANCELLOR.—I know of no such reports. I hope no reporter will ever be under the direction of the judge.

Counsel then quoted the case from one of the "irregular" reports.

NEW TRIALS MOVED IN HILARY TERM.

COURT OF COMMON PLEAS.

NEW TRIALS.

Midd.—Hayne v. Cummings
& ora.

—Trotman v. Wood & ora.

Lond.—Cook v. Colebrooke

—Chapman v. Adams

—Mallet v. Bateman

—Alvarez de la Rosa v.

Arrieta

Lond.—Alvarez de la Rosa v.
Prieto

—Moore v. Pawley

Suspended.

Lond.—Gerisch v. Bernslängl

—Cross v. Roberts

—Koetting v. Walmsley.

DEMURRER PAPER.

Monday, Jan. 25.

Samuelson & ors. v. Colclinan
(Case by order from Arb.)
Strick & ors. v. Swansea Canal
Co. (Case by order)
Ruffle v. Boyd (D.)
Tapping & an. v. Keysall
(County Ct. Ap.)
Bayley v. Wilkinson (Ap.
from Just.)

Thomas v. Middleton & an.
(Case Nisi Prius)
Wednesday, Jan. 27.
Green & an. v. Preston (D.)
Sheppard & ors. v. Church-
wardens of the Parish of
Biddford (Case by order)
Tidey v. Mollett (D.)
Bailey the elder v. Bodenham
(County Ct. Ap.)

COURT OF EXCHEQUER.

NEW TRIALS.

Midd.—Brown v. Smith
Lond.—Neal v. Grove
Stewart v. Smith
Woolley v. Tucker
Hilbery v. Hutton & ors.
Michaelis v. Davis

Liverp.—Brabner v. Macann
Pearson v. London and
North-western Railway Co.
Barker v. Barnett
Hilterman v. Beresford.

SPECIAL PAPER.

Young v. Stockton Corpora-
tion (Ap.)
Webster v. Same (Ap.)
Iptoness Park Iron Ore Co.
v. Pattinson (D.)
Jepson v. Key (Sp. C. by ord.)
Birch v. Brayshaw (Sp. C. by
order)
Lungley v. W. B. Arnold (D.)

Irwin v. Brandwood (D.)
Cole v. Sivell (App.)
Dolan & ors. v. Towneley (D.)
Parry v. Owens & an. (Sp. C.
by order of Nisi Prius)
Marchman v. Hughes (D.)
Sturges v. Evans (D.)
Timmins v. Harrison (D.)
Lewis v. Smith (D.)

SITTINGS IN ERROR.

QUEEN'S BENCH.

Tuesday Feb. 2 | Wednesday Feb. 3

COMMON PLEAS.

Thursday Feb. 4 | Friday Feb. 5

EXCHEQUER.

Saturday Feb. 6 | Monday Feb. 8

Mr. Corrie, the magistrate at Bow-street, having been elected to the office of city remembrancer, Mr. James Vaughan, of the Oxford Circuit, has been appointed to succeed him at Bow-street.

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N O T I C E.

The Office of THE JURIST is removed to No. 39, BELL YARD, TEMPLE BAR, W. C., where all communications for the Editor are requested to be addressed.

Orders for Advertisements, and Letters on business matters, to be addressed to the Publisher as above.

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INSTITUTES of INTERNATIONAL LAW, in Time of Peace and Time of War. By RICHARD WILDMAN, Esq., Barrister at Law. In 2 vols. 8vo. 1849-50. Price 17. 5s. 6d. bds. V. & R. Stevens, Sons, & Haynes; H. Sweet; and W. Maxwell.

THE JURIST.

LONDON, JANUARY 30, 1864.

THE appearance of the Consolidated Regulations of the several Societies of Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn (described more briefly as the Four Inns of Court), as to the admission of students, the mode of keeping terms, the calling of students to the Bar, the granting certificates to practice under the Bar, and legal education, shew that the Benchers have advanced another step towards a legal university.

To those who remember the time when the operations of the Bench were confined to the receipt of enormous incomes, which they applied solely to architectural or culinary purposes, and to the registration of the names of students and barristers, about whose education or fitness for the important duties of advocates or counsel, they never even affected to care at all—when lectures, if ever delivered, were unattended, and when every examination for a call, when required, was more ludicrous than a farce—to those who can carry their recollection so far back, the result of the Lord Chancellor's long-continued and successful labours in the cause of legal education will induce them to hope, that still further progress will be made in the same direction.

Hitherto each of the Inns of Court has, though no doubt after some communication with the other Inns, taken upon itself to instruct students in some one branch of the law, but different rules existed in the various Inns, both as to the admission of students and their call to the Bar.

The Benchers of all the Inns have, we think, very wisely come to the determination of issuing regulations for those purposes, common to all the Inns.

These regulations, no doubt, are susceptible of great improvement, and, most probably, will ere long be improved, but those who know anything of the constitution of the Bench, must be aware what difficulty those who wish to promote the study of the law as a science, and to advance the highest interests of the Bar, have had, and still have, to contend with, in the opposition of those, among their number, who have picked up what they possess of law merely in practice, who know little or nothing of law as a science, and who think, therefore, that it is useless or superfluous that others should enjoy advantages in studying their profession which they themselves never enjoyed, and therefore cannot appreciate.

These observations are made to account for what we consider the shortcomings of the Consolidated Regulations—they are not exactly what the party of progress among the Benchers could have wished for, but we believe they are such only as the opposite party would allow them to make.

First, with regard to the admission of students, we think that the preliminary examination before the joint board of the Four Inns for students, being persons who have not passed a public examination at any of the universities in the British dominions, constitutes

scarcely a sufficient test, that the candidate for admission has received such a liberal education as to make him a desirable addition to the English Bar.

The following are the only subjects of examination:—(a). The English and Latin languages. (b). English History.

Now, we think, that, without throwing too great a burthen upon the examiners, the subjects of examination ought to have been extended to the Greek language and General History, and one modern language at least, say, either French, German, or Italian, at the option of the candidate.

With regard to the call to the Bar, we think that the Consolidated Regulations are very unsatisfactory. All that appears to be essential to a call is as follows:—The student must (first) *either* have attended during one whole year the lectures and private classes of two of the readers; *or* (secondly) have been a pupil during one year in the chambers of some barrister, certified special pleader, conveyancer, or draftsman in equity, or two or more of such persons; *or* (thirdly) have satisfactorily passed a general examination.

The Benchers, therefore, have not yet ventured to make a satisfactory examination *compulsory* upon those seeking admission to the Bar; so that if a person can shew either that he has attended lectures and private classes, or been a pupil in chambers for one whole year, although he may during that time have learnt nothing, and although at an examination he may have been most ignominiously plucked, he may still claim to be called to the Bar, and in due time he will be equally well qualified to accept one of those numerous offices for which Parliament requires a certain standing at the Bar.

The number of readers still remains the same: first, a reader on *jurisprudence*, and *civil*, and *international* law; secondly, a reader on the law of real property; thirdly, a reader on common law; fourthly, a reader on equity; fifthly, a reader on constitutional law and legal history.

We have often urged the propriety of appointing a separate reader for international law, for that subject has nothing more in common with jurisprudence and civil law (by which, it is presumed, the Roman law is meant) than any of the subjects allotted to any of the other readers.

The Benchers appear, however, to contemplate an additional reader some time or other on this subject, for the 30th regulation says, "that a separate course on international law shall be delivered, and shall for the present be delivered by the reader on jurisprudence and civil and international law."

The Benchers would, we think, have taken the wiser course had they at once appointed a separate reader upon international law. In making this observation, we do not for a moment wish to cast the slightest reflection upon the learned gentleman who holds the appointment of reader on jurisprudence and civil law, as well as international law; but we think that the subjects which are thrown upon him are too numerous and weighty for a single individual; the two first subjects are amply sufficient to occupy his whole time and attention.

Now that the Society of Doctors' Commons has ceased to exist, the learning which was almost peculiar to the place; viz. that of international law, falls naturally under the protection of the Inns of Court, and ought to receive that attention which its great importance demands.

Formerly we looked, in a great measure, to Doctors' Commons for a knowledge of international law, whenever any question arose between ourselves and foreign nations. The Solicitor or Attorney-General for the time being—at any rate, on first taking office—often knew little of the subject, except what he obtained by the hasty cramming of a learned civilian, or by what he picked up in the text-books, often written, as in the case in some American books, in a spirit by no means friendly to our own pretensions.

Although the judgments of our Courts upon one branch of international law are unsurpassed for their powers of reasoning, and the exhibition of the highest judicial qualities, we have no text-writers who do justice to the entire subject of international law; and the reason is, that no adequate remuneration has ever been offered sufficient to engage a man of high ability in its study and exposition.

If a good course of lectures were delivered on international law, by a reader who gave up his whole time to the subject, the Inns of Court would, with much profit, be resorted to by all persons about to enter into the diplomatic service; and, indeed, by all who wished to render themselves complete statesmen. But the subject of international law, under which term is comprehended, not merely international common law (if we may be allowed to use the expression), or that part of the law of nations which exists independent of treaty, but also all the treaties which exist between the different countries of the world, and by which their intercourse with each other is in a great measure regulated, is not only vast but intricate, and only partially explored, and the knowledge of which, by this means, would soon be diffused, would doubtless lead to many important results.

The emolument of each reader is stated to be "the fixed sum of four hundred guineas a year." We presume, in addition to this sum, they are to receive the fees paid by the students, in proportion to the number attending the private classes (34, 35). What that may amount to when added to the fixed sum of four hundred guineas, we do not know; but we believe, that the remuneration of the readers bears but a very small proportion to the large revenues of the Inns.

One improvement effected by the regulations is, that the examinations in future are not to be conducted by the reader of the class to be examined.

Lastly, we are glad to observe, that the Inns of Court are of themselves beginning to effect these improvements, without waiting for the intervention of Parliament: this, however, cannot be long delayed, unless some important change is made in the constitution of the Bench of each of the Inns of Court; but if the aid of Parliament is not necessary to effect such a change, it might be best carried out by the Inns themselves.

MR. O'MALLEY IRWIN, a name not unknown in legal circles, has published a letter, addressed to Lord Palmerston, in which he discusses, at great length, the grievous wrong which, as he alleges, Sir George Grey has done to him, and the peril to which all her Majesty's subjects are exposed should this wrong remain unredressed. Some of our readers may be aware that Mr. Irwin, under the provisions of stat. 25 & 24 Vict. c. 34 (Mr. Bovill's act), left with the Home Secretary his petition of right (relating to claims which we need not enter upon), in order that Sir George Grey might, in compliance with the 2nd section of the statute, submit the same to her Majesty, and that her Majesty might grant her fiat, that right be done to him, and that the fiat was refused. The 2nd section of the act is in the following terms:—"The said petition shall be left with the Secretary for the Home Department, in order that the same may be submitted to her Majesty, for her Majesty's gracious consideration, and in order that her Majesty, if she shall think fit, may grant her fiat that right be done, and no fee or sum of money shall be payable by the suppliant on so leaving such petition, or on his receiving such the same." Now, we understand from Mr. Irwin's letter, that the charge he makes against Sir George Grey is, not that he did not submit the petition to her Majesty, but that he advised her not to grant her fiat. If this act of Parliament is to be construed by the same rules of construction which are applied to other acts, we think it is clear that it is in the discretion of her Majesty to grant or withhold her fiat—she is to grant it "if she shall think fit," which words clearly imply an exercise of discretion. Then, what is the charge against Sir George Grey? It must be, not that in the honest performance of his duty, and in the faithful expression of his opinion on the merits of Mr. Irwin's case, he advised her Majesty not to grant the fiat, but that he was actuated by malice, or some improper motive, in advising her Majesty to withhold it. That the Queen herself could be influenced by anything but a desire to do what was just towards Mr. Irwin nobody will venture to assert, and we are at present at a loss to know what improper motive could have influenced Sir George Grey in giving the particular advice to her Majesty, which we assume he did give in Mr. Irwin's case. It was his duty to advise her Majesty upon the petition; and if he did advise her conscientiously, it is difficult to see by whom he can be called to account, however mistaken he may be in the advice which he has given. We should, therefore, have considered that Mr. Irwin was ill advised in his attack on Sir George Grey, had we not read in the first sentence of his letter, that Sir Fitzroy Kelly was about to present "A humble petition to her Majesty, praying that she will be graciously pleased to grant her fiat to the petition of right." To us, who are unacquainted with the grounds on which Sir Fitzroy Kelly intends to rest his petition, this seems to be rather a strong proceeding, and to amount to an assertion that her Majesty has no discretion to exercise in the matter, and that the granting the fiat is merely a ministerial office. We have no doubt that Sir Fitzroy Kelly will adduce strong reasons in favour of his

application, and that he will shew either that Sir George Gray has grossly misled her Majesty in inducing her to refuse her fiat to the petition, or that the statute renders it imperative upon her to grant it. At present we are unable to adopt either view of the case. The statute which gives the subject a new mode of obtaining redress for injuries alleged to be sustained at the hands of the Crown, gives at the same time, if words are to have their plain meaning, a discretion to the Sovereign as to the cases in which that remedy may be adopted; and it seems to contain a provision against the harsh exercise of that discretion in its 20th section, which enacts, that "nothing in this act contained shall prevent any suppliant from proceeding as before the passing of the act;" so that whatever constitutional rights the subject had before this act was passed, are still preserved to him.

Notanda.

Notanda in Law, Equity, Bankruptcy, Admiralty, Discreet, and Probate Cases. By TENISON EDWARDS, Esq., of the Inner Temple, Barrister-at-Law. Vol. I, containing Notes on Cases decided in 1863. 8vo., pp. 76. [T. F. A. Day.]

In the conception of "Notanda," Mr. Edwards has originated a new and very useful design, which he has carried out with considerable ability and industry. To those who are acquainted with the plan of the work it is unnecessary to say anything, to those who are not, we may repeat the author's explanation:—

"The question is: How can the practitioner with the greatest facility make himself acquainted with the latest decisions upon any given subject? And my reply is: By looking, not through a dozen annual digests, but by looking to the standard text-books, such as Sugden's Vendors and Purchasers, Williams on Executors, Jarman on Wills, &c.; and there, in juxtaposition with the topics treated of, and on the very page where the author in his next edition would introduce the modern decisions, to find clear and intelligible notes of such decisions as have been come to upon the particular topic since the edition of the work. Or, if the question turn upon the construction of a statute, to turn to the section of that statute, and there to find like clear and intelligible notes of such decisions upon that particular section. I have explained my plan in answering the above question, and I have no fear of a contradiction from any practical man.

"A little further development, and I have stated my plan. I read every judicial decision of the Queen's Courts in England and Ireland reported in the authorised and unauthorised reports, and I make from them, or such of them as are of any value, notes of the result of the decisions in the shortest, most pithy, and suggestive language that I can select; such, in fact, as I should write into my own text-books or statutes. I head the note, in the case of the construction of a statute, with the statute and the section; and in the case of it not being upon the construction of a statute, I head it with a standard text-book upon the particular subject, with the paging or other reference, such as part, chapter, and section, where the note should be placed; and, lest the edition of that book in the subscriber's library should not be the same as that from which I take my reference, I will also say, 'citing such and such a leading case,' by which means the proper

reference may easily be found out by the table of cases in the text-book, and the leading case referred to may also have a note placed in its margin, if the subscriber should have a library of reports.

"These little notes are printed in very clear type, on one side only of the paper, and are intended to be severed from each other, and placed, by means of paste or gum, according to the reference at the head of each note. There are four modes in which these notes may be used. They may be affixed to the page of the book referred to; they may be copied by the clerk into the page of the book, they may be affixed to a blank page inserted in the text-book, or they may be numbered and inserted on blank sheets at the end of the book, placing a reference by its number at the page or place referred to. I take it that if a man has in his library the practical statutes of the present and last reigns, together with a dozen, or even less, of the standard text-books of the day, and that he places, or causes to be placed, these little notes where directed, he can at once lay his hands upon nine-tenths of all the modern cases, and indeed upon all the cases of ordinary practical utility. It is to be remembered that even should the subscriber not have the text-book to which I refer, yet if he have one on the same subject he may generally find the proper place in his own text-book by the topic, and the leading case cited in my text-book. I will carefully select such text-books for my references as I find best arranged as to matter and index. And having so done I will invariably refer to them, unless in exceptional cases; but should I refer to a text-book other than my regular one, I will also give a reference to my regular text-book."

To this explanation we added, in a notice of the first number of the work, the suggestion, that thirty or forty of these notelets might, if necessary, be placed opposite to a single page of a text-book, by gumming them successively to the back edge of the inner margin and to each other, still leaving the margin of the book available for written notes.

After the appearance of the first number an improvement was made, by numbering the notes consecutively, and by means of a re-issue this was extended to the notes included in the first number. The last note in the volume just completed bears the number 1637. These numbers render the actual insertion of the notes in the books of reference unnecessary; it will be sufficient to set down the number of the note, although, for general purposes, it is more satisfactory and convenient to have the name and abstract made.

The volume contains a table of cases, an index of subject-matters, and a separate index of reference to decisions on statutes, section by section, which will render the work available as a digest if the notes are not cut up for distribution; and it is suggested, that those subscribers who cut up the notes should keep a blank book to receive, under appropriate divisions, such of the notes as refer to text-books or statutes not in their library.

We think that Mr. Edwards deserves great credit for the enterprise and ability with which he has carried on his very useful undertaking, and we heartily wish him success. Indeed, the discontinuance of the publication would be a serious inconvenience to ourselves, and, we presume, to a large majority of the subscribers.

We hope that he will reconsider that alteration of his plan, announced in a recent number, which consists in rejecting such cases as he considers to involve no new point of doctrine or practice. Few lawyers would like to rely on any other judgment than their own as to the value of any decision in point; and it is, besides, often important to know whether a decision, which may appear to be doubtful or unsound,

has or has not been repeatedly followed in identical cases.

A Manual of Equity Jurisprudence, founded on the Works of Story, Spence, and other Writers, and on the subsequent Cases, comprising the Fundamental Principles, and the Points of Equity usually occurring in General Practice. By JOSIAH W. SMITH, B.C.L., Q.C. Seventh Edition. [Stevens, Sons, & Haynes. 1864.]

MR. SMITH'S Manual of Equity Jurisprudence has fairly won for itself the position of a standard work upon the important subject of which it treats. Its great utility to the student has long been acknowledged; and the present edition has been made peculiarly valuable to practitioners, by the author carrying out a plan, commenced in the two former editions, of inserting such further points, to be found in the authorised reports, as appeared requisite to be noticed in a book of this kind, in addition to those numerous and accurate propositions which he has with so much care deduced or enunciated from the bulky treatises of Story and Spence. This plan renders the Manual a supplement to the works of Story and Spence, and therefore highly useful to those practitioners who are in the habit of consulting those able works.

JOINT BOARD OF EXAMINERS,

APPOINTED FOR ONE YEAR BY THE FOUR INNS OF COURT, FOR CONDUCTING THE EXAMINATION OF STUDENTS PREVIOUS TO ADMISSION AT AN INN OF COURT.

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HASSARD HUME DODGSON, Esq., 1, Tanfield Court, Temple.

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HENRY DANBY SEYMOUR, Esq., M.P., 39, Upper Grosvenor Street, W.

ROTA OF EXAMINERS

Appointed to conduct the preliminary Examinations from the 16th January to the 6th August, 1864.

Jan. 15, April 9, and July 2—J. R. Kenyon, Q.C., and H. H. Dodgson.
Jan. 23, April 16, and July 9—J. J. Hooper and L. H. Courtney.
Jan. 30, April 23, and July 16—J. Henderson and J. A. Russell.
Feb. 6, April 30, and July 23—W. F. F. Boughey and H. Davey.
Feb. 13, May 7, and July 30—W. M. Best and F. A. Philbrick.
Feb. 20, May 14, and Aug. 6—F. Lushington and M. H. Cookson.
Feb. 27 and May 21—J. Greenwood, Q.C., and H. D. Seymour, M.P.
March 5 and May 28—Right Hon. Sir L. Peel and E. A. Hadley.
March 12 and June 4—J. Bullar and J. Houston.
March 19 and June 11—R. S. Tripp and W. Baily.
March 26 and June 18—W. P. Jolliffe and E. Headlam.
April 2 and June 25—E. Macnaghten and V. Lushington.

At a Meeting of the Board of Examiners, held in the Parliament Chamber, Middle Temple, on the 18th January, 1864, the Right Hon. Sir LAWRENCE PEEL being in the chair, and the Committee appointed at the previous meeting having presented their Report,

It was resolved—

1. That a chairman and a secretary be appointed for the current year.
2. That the chairman shall have power to call general meetings, by giving not less than three days' notice, which notice shall state the object of the meeting.
3. That at a general meeting six shall form a quorum, and the chairman shall have a casting vote.
4. That during the current year an examination shall be held on every Saturday, between the days fixed by rule 6 of the Consolidated Regulations, from 10 a.m. till 1 p.m.
5. That whenever the chairman shall think that there ought to be more than one weekly examination, he may fix one or more extra examinations, and appoint examiners to conduct the same, and notice of the time of every such extra examination shall be sent to the four Inns of Court.
6. That during the current year, by the permission of the Benchers of the Middle Temple, the general meetings of the Board shall be held in the Parliament Chamber of the Middle Temple, and the examinations shall be held in the Benchers' room, under the library of the Middle Temple.
7. That two examiners shall conduct each examination, of whom one shall always be present, and both shall be present at any viva voce examination; and they shall enter their names and the date of the examination in a book to be kept for the purpose.
8. That the certificates shall be granted and signed by the two examiners who shall have conducted the examination; and any other examiners who may have been present shall not decide on the merits of the candidates, and shall not be considered as "attending," within the meaning of rule 9 of the Consolidated Regulations.
9. That there shall be an examination on paper in all cases, and a viva voce examination at the discretion of the examiners.

10. That the examination in the Latin language shall consist of translations from one or more classic authors.

11. That the examiners to conduct the weekly examinations shall be appointed by the following rota :—
[See supra.]

12. That it shall be lawful for any examiner to appoint a substitute for himself from the Board of Examiners, for the purpose of conducting an examination.

13. That the secretary shall keep a copy of the rota, and shall record all substitutions of which he may receive notice; and shall, a week before each examination, send notice to the examiners who shall have to conduct the same.

14. That copies of these rules be sent to the four Inns of Court, and to the Council of Legal Education.

15. That J. R. Kenyon, Esq., Q. C., be chairman, and T. H. Dakyns, Esq., Under Treasurer of the Middle Temple, be secretary, for the current year.

(Signed) LAWRENCE PEEL, Chairman.

CALLS TO THE BAR.

The undermentioned gentlemen were this day (Jan. 26) called to the Bar :—

LINCOLN'S INN.—Joseph Maurice Solomon, Esq., M.A. (holder of Studentship of Mich. Term, 1863); Luke Owen Pike, Esq., M.A.; Joseph Radcliff, Esq., M.A.; John Haughton, Esq., B.A.; Henry Spencer Walpole, Esq.; Duncombe Pyrke, jun., Esq.; Robert Webber Monro, Esq., B.A.; Walter Charles Renshaw, Esq., LL.B.; Julian Goldsmid, Esq., M.A.; Charles Alfred Dawson, Esq., B.A.; Charles Thomas Luck, Esq., M.A.; John George Witt, Esq., M.A.; John Weir, Esq.; Shackleton Hallett, Esq.; Ernest Riddale Ellaby, Esq., M.A.; Frederick Brown, Esq.; and William Thackeray Marriott, Esq., B.A.

INNER TEMPLE.—George Stratton, Esq., M.A.; Goven Edward Evans, Esq., M.A.; William Lupton, Esq., M.A.; Richard Jenerly Shee, Esq.; Donald MacLennan, Esq., M.A.; James Mew, Esq., B.A.; Herman Charles Merivale, Esq., B.A.; Alsager Hay Hill, Esq., L.B.; John Henry Kennaway, Esq., M.A.; John Thomas O'Regan, Esq., LL.B.; James Harrison, Esq., M.A.; Edward Reynolds, Esq., B.A.; Millis Coventry, Esq., B.A.; George Robert Rix, Esq., LL.B.; Francis Headland Keenlyside, Esq., B.A.; Charles Frederic Millett, Esq., B.A.; Herbert Augustus Hilla, Esq., B.A.; Richard Digby Cleasby, Esq., B.A.; Lewis Williams, Esq., B.A.; and Edmund Forster Webster, Esq.

MIDDLE TEMPLE.—Edward John Rudyerd Warner, Esq.; Hugh John Cadell Beavan, Esq.; Charles Albert Beavan, Esq., B.A.; Ernest Didier, Esq.; Henry Riseborough Sharman, Esq.; William Henry Michael, Esq.; and Thomas Makin, Esq.

GRAY'S INN.—Edward Romilly, Esq., M.A., and Patrick O'Sullivan, Esq.

BOOKS RECEIVED.

What England should do with her Convicts. A Solution suggested. By W. M. Wilkinson.—T. J. Allman. 1864.

Compensation to Landowners: being a Practical Digest of the Law of Compensation. By George V. Yool, M.A., of Lincoln's Inn, Barrister-at-Law, and sometime Fellow of Trinity College, Cambridge.—W. Maxwell; Hodges, Smith & Co., Dublin; Bell & Bradfate, Edinburgh. 1864.

Petition of Right. A Letter to the Right Hon. Lord Palmerston, M. P., upon Sir Fitzroy Kelly's intended Motion as to the Assumption by the Secretary of State for the Home Department of a Power, so momentous in its bearing on the Constitutional Rights of England, as advising her Majesty not to issue her Fiat, that Right be done in the Matter of a Petition of Right before her Majesty's Judges of the Court of Queen's Bench. By George O'Malley Irwin, Esq., Barrister-at-Law.—Stevens, Sons, & Haynes. 1863.

Statement and Appeal of the Anti-Transportation League of Victoria. To the People of Great Britain.

Second Appeal of the Anti-Transportation League of Victoria. To the People of Great Britain.

PUBLIC EXAMINATION OF STUDENTS.

HILARY TERM, 1864.

At the public examination of students of the Inns of Court, held at Lincoln's Inn Hall, on the 7th, 8th, and 9th January, 1864, the Council of Legal Education have awarded to—

Ernest A. C. Schalch, Esq., student of the Inner Temple, a studentship of fifty guineas per annum, to continue for a period of three years.

John Cunningham, Esq., student of the Middle Temple, certificate of honour of the first class.

William Lupton, Esq., student of the Inner Temple, Robert Webber Monro, Esq., student of Lincoln's Inn, Herbert A. Hilla, Esq., student of the Inner Temple, E. H. Whinfield, Esq., student of the Middle Temple, Lovell B. Clarence, Esq., student of the Inner Temple, and Shackleton Hallett, Esq., student of Lincoln's Inn, certificates that they have satisfactorily passed a public examination.

By order of the Council,

(Signed) WESTBURY, C., Chairman.

Council Chamber, Lincoln's Inn,

Jan. 18, 1864.

COURT OF QUEEN'S BENCH.

HILARY TERM, 27 VICT.—Jan. 25, 1864.

This Court will, on Tuesday, the 2nd, and Wednesday, the 3rd, days of February next, and also on Tuesday, the 9th day of February next, and the four following days, hold sittings, and will proceed in disposing of the cases in the New Trial, Special, and Crown Papers, and any other matters then pending; and will also hold a sitting on Monday, the 22nd day of February next, for the purpose of giving judgments only.

BY THE COURT.

NEW TRIALS MOVED IN HILARY TERM.

COURT OF QUEEN'S BENCH.

Midd.—Low v. McGill

—Minto v. Hall

Lond.—Hughes v. Greame

—Hughes v. Greame & an.

—Plane v. Spink

—Israel v. Harrington (Stet.

Pro. to be agreed to)

—Larmouth v. George

Lond.—Cox v. Mayhew

Liverp.—Priestley v. Hop-

wood

—Nicholson v. Heesemer

—Kellock v. Samuelson

Tried during Term.

Lond.—Thompson v. Carter.

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THE JURIST.

LONDON, FEBRUARY 6, 1864.

THE Bankrupt Act of 1861, by no means rarely furnishes the Courts with questions of construction for their consideration, which shew how difficult it is, in a measure so framed, to foresee and provide for all the cases which may fall within some of its provisions. General language is occasionally used, without the addition of an exception or proviso, rendering a strong decision apparently necessary, in order to avoid the inconvenience or injustice which would arise from a strict construction of a loose statute.

The provision in the Bankrupt Act of 1861 to which we would call attention is the 137th section, the decision upon which we desire to make a few remarks, is the case of *Ex parte Roberts, re Holden* (10 Jur., N. S., part 1, p. 28). The words of the section are as follows:—"At any time after the expiration of twelve months from adjudication, or at any other earlier period with the approbation of the court, the assignees may sell by auction or tender, or, with the sanction of the court, by private contract, all or any of the book debts due, or growing due, to the bankrupt, and the books relating thereto, and the goodwill of his trade or business, and assign the same to the purchaser; and such purchaser shall, by virtue of the assignment, have power to sue in his own name for the debts assigned to him, as effectually, and with the same privileges concerning proof of the requisites of bankruptcy and other matters, as the assignee himself." (Sect. 137).

Now, it seems to be tolerably obvious, on the reading of this section, that the intention of the Legislature must have been, that the books and book debts should be sold, not separately from, but *together* with, the goodwill; and the reason doubtless was, that the goodwill of any business would produce a larger price, if, at the same time that a person purchased it, he became also the purchaser of the books (by which he would be able to ascertain who were the customers of the concern), and of the book debts (by becoming the owner of which, he might be able to retain such an amount of influence over the debtors as might induce them, if treated with some forbearance, to continue to deal with him). If such were the object of the section, no objection can be taken to it, at any rate, so far as concerns the sale of the goodwill and debts of ordinary traders; but even in the case of such traders, if their debts were to be sold apart from the goodwill, instead of being collected and got in by the assignees, it may readily be foreseen, that a traffic in debts due to bankrupts would soon spring up among those individuals, who, under the names of different professions or callings, live, and evidently thrive, in the atmosphere of the bankrupt courts; and the gains to be made by the sums recovered on such debts, would not be diminished by the addition of costs, which debtors might be compelled to pay when litigation was, perhaps, not too tardily commenced by some enterprising attorney.

The case of *Pooley v. Quiller* (2 De G. & J. 327), and the excellent judgments of the Lord Justices of the Court of Appeal in Chancery, shew in a very clear light the evils of a person, filling the office of assignee and accountant to the assignees of a bankrupt, becoming the purchaser of dividends due to creditors of the bankrupt. The case of *Ex parte Roberts, re Holden*, lately heard by the Lord Chancellor, shews the evils which would result by the sale of the debts due to bankrupts, especially when engaged in some professions, to accountants, and such persons. In that case, it appeared that solicitors, who had carried on business together in partnership, became bankrupt. The manager of the estate, with the authority of the assignees, sold the books and book debts of the firm to an accountant (but whether he also bought the business at the same time does not appear to be clear from the report). Upon the accountant presenting a petition to the Lord Chancellor, praying that the assignees might be ordered to carry out the sale, his Lordship dismissed the petition. According to the construction which his Lordship put upon the section, it only authorised the sale of "book debts, and the books relating thereto," when it could lawfully be done. The sale in the case before him was, his Lordship said, "an extremely wrong thing; and it only shewed that the assignees, and the solicitors of the assignees in that instance, had not attended to their duties." The evils attendant upon such a sale would, doubtless, be great. It would, as the Lord Chancellor observed, "put into the market some of the most confidential communications between a solicitor and his clients. If the prayer of the petition were granted, there might be numerous applications by clients to restrain such an improper publication of the affairs of the client, as the sale of a solicitor's books by public auction."

As to the impropriety of such a sale there is no doubt, but the question which the assignees had to consider was, whether it was legal, as being authorised by the act; and upon reading it attentively, it seems to be so authorised.

Whether they acted discreetly in making the sale in such a case is doubtful, but if any blame is to be attached to the assignees or their solicitors for the sale, it ought to be borne at least equally by the Legislature, who, when they enacted that the book debts and books of bankrupts might be sold, could easily have excepted the book debts and books of persons carrying on certain businesses or professions, where the sale would be to the prejudice of those who dealt with them.

ERRATUM.—In the Leading Article of last week, p. 32, col. 1, line 25 from bottom, for "exploded," read "explored."

AT the commencement of every session of Parliament we naturally look to the Queen's Speech for a few sentences foreshadowing some proposed alteration or improvement in the law.

The Queen's Speech just delivered can scarcely be said to do more than allude in the most general terms, and in less than two lines, to what may be expected

next session in the shape of law reform. In the speech it is said, that "various measures of public usefulness will be submitted for your consideration." This part of the speech does not condescend to particulars, nor can it be said to promise much. It is, however, convenient to avoid details, as the various measures may, perhaps, not yet have been thought of, but may turn up during the course of the session, and will then be brought before Parliament, in a shape well calculated, from the amount of thought and care bestowed upon their preparation, to make them take their place fitly by the side of the majority of the acts in our Statute Book, including the last Bankruptcy Act.

Perhaps, also, it is well for the Government to promise little, for when little is promised, no disappointment is felt when little is done, as is naturally the case when small performances follow "great expectations."

Perhaps the parsimony of Mr. Gladstone opposes insurmountable obstacles to the great plans long since spoken of, but not yet commenced, by the Lord Chancellor.

THE case of *Swan v. The North British Australasian Company* (32 L. J., Ex., 273; 10 Jur., N. S., part 1, p. 102) is one which deserves attentive consideration, on account of the different views entertained and expressed by the judges before whom it was argued, on one branch of the law of estoppel. The facts were, that Mr. Swan, being the owner of some shares in the defendants' company, and also of shares in another Australian company, at the instance of one Oliver, his broker, executed blank transfers, for the purpose of enabling Oliver to fill in the numbers and descriptions of the shares in the latter company, which were the shares he intended to transfer. The certificates of the shares in the defendants' company, which, according to their regulations, it was necessary to produce in order to get transfers registered, had been left by Swan in a box, which was under Oliver's care, but of which Swan kept the key. Oliver fraudulently filled in the blank transfers, which had been so executed by Swan, the numbers and descriptions of Swan's shares in the defendants' company, and sold them. He also got a duplicate key to the box without Swan's knowledge, and took out the certificates, and was thus enabled to procure a transfer of the shares in the defendants' company. When Swan discovered the transaction, he required the purchasers to retransfer the shares to him, which they refused to do; and he required the defendants to restore his name to the register, which they also refused. Under these circumstances, the defendants contended that Swan was estopped by his negligence from disputing the title of the purchasers to the shares. In the Court of Exchequer the judges were divided in opinion; Pollock, C. B., and Wilde, B., considering that Swan was so estopped; Martin and Channell, BB., considering that the law of estoppel, founded on negligence, did not apply to deeds; and also, that even if it did, the facts did not shew such negligence in Swan as would create an estoppel. (31 L. J., Ex., 425; 8 Jur., N. S., part 1, p. 940).

We should also mention that the case had already come before the Court of Common Pleas, upon an application by Swan against the defendants, under the Joint-stock Companies Acts, to compel them to restore him to the register, and that the judges in that court were also equally divided; Erle, C. J., and Keating, J., being of opinion that there was an estoppel by negligence; Williams and Willes, JJ., being of the contrary opinion. (30 L. J., C. P., 113). The counsel for the company, on the several occasions on which the case has been argued, founded their arguments in favour of the estoppel, on the well-known case of *Pickard v. Sears* (6 Ad. & El. 469), and other similar cases, and contended that the law, which applies to negotiable instruments, as laid down in *Young v. Grote* (4 Bing. 253), applied also to deeds. The counsel for Swan contended, that the law had never been extended to deeds, and was limited to negotiable instruments. All the authorities on the point are cited by the judges or the counsel, and eventually the Court of Error (dissentiente Keating, J.), decided in favour of Swan; but as their judgments are founded principally upon the opinion which they had arrived at, that there had not been such negligence on Swan's part as to create an estoppel, the important question, whether this law of estoppel is applicable to the case of forged deeds, can hardly be said to have been determined. It may be that the law should be so extended, but we do not think that at present there is any authority for such an extension. *Pickard v. Sears*, of which the late Chief Justice Jervis once said, "that it was a case which had a great deal to answer for," has, we think, given rise to some rather wild notions on the law of estoppel. It is qualified, to a certain extent, by *Freeman v. Cooke* (2 Exch. 654); but even so qualified, we can hardly think it is an authority for holding that a forged deed shall be considered a valid one. The doctrine laid down in *Young v. Grote*, as to negotiable instruments, which form part of the currency, and stand upon a peculiar footing, has never been extended to conveyances of property by deed; and Williams, J., observes, in his judgment in the Court of Common Pleas, "that it is doubtful whether the cases, as to the liability of a man who signs a blank bill, or note, or cheque, are founded on the doctrine of estoppel, or on a rule of the law merchant, that an actual authority is thereby conferred on the person in whose hands the instrument is, "and that it would be inconvenient and dangerous to apply the principle of them any further."

We would particularly recommend the judgment of Martin, B., for perusal; the doctrine of estoppel is fully discussed in it, and the authorities cited and commented upon. The question is certainly an important one. The extension of the rule to deeds might, as is pointed out by some of the judges, lead to very serious consequences, while, on the other hand, an innocent person may occasionally suffer if it is not to be so extended. There must, however, be clear and definite rules of law, and there must always be some cases of hardship, in the application of those rules, and we are disposed to think that this law of estoppel has been carried quite far enough.

MR. JUSTICE SHEE AND THE HOME CIRCUIT.—The members of the Home Circuit, to the number of at least 180, entertained Mr. Justice Shee at dinner, at the Albion Tavern, in Aldersgate-street, on Thursday, the 28th February. Mr. Montagu Chambers presided; and Lord Chelmsford, Mr. Justice Willes, Baron Channell, Sir Fitzroy Kelly, Sir Erskine Perry, and the Recorder of London (all at one period or another members of the Circuit) were guests.

MR. O'MALLEY IRWIN'S REPLY TO THE COMMENTATOR IN "THE JURIST," OF THE 30TH JANUARY, 1864.

We insert, at Mr. O'Malley Irwin's request, a letter which we have received from him, and his observations on our article relating to his petition of right, which appeared in THE JURIST of Saturday, January 30:—

"TO THE EDITOR OF 'THE JURIST.'"

"Queen's Hotel, Burlington Gardens,
Feb. 1, 1864."

"Sir,—As you have opened your columns to some comments upon my Pamphlet, in relation to Petition of Right, which I addressed to Lord Palmerston, I beg, on behalf of myself and every British subject, that you will kindly favour me by the insertion of my reply.

"I have the honour to be,

"Your obedient servant,

"GEORGE O'MALLEY IRWIN."

It is to be regretted that a question of such grave and constitutional import has not devolved on abler hands than mine, to assert and defend the indefeasible right of petition; but I hope no British subject will hereafter suffer through any want of zeal and devotedness to the cause of that right on my part, or through the want of any straining of whatever humble capacity and means I may possess.

The constitutional right, which the subject, by virtue of the 1st section of the Petition of Right Act, 1860, is entitled to ask, forms the ground on which Sir Fitzroy Kelly rests the right, that my petition be heard before her Majesty's judges of the Court of Queen's Bench. This common-law right and statute afford a discretion only to the Sovereign to be graciously pleased to satisfy the demand of the petitioner without further suit, in all cases which her Majesty knows to be manifestly just; but in a case where there is doubt and difficulty involved, her Majesty must graciously be pleased to indorse her royal order, that it be brought before her judges of the court, and the venue selected by the petitioner under sect. 1, without ministerial authority being substituted in lieu of the proper judicial tribunal appointed by statute for the trial of such petition.

This statute, by the words "if she shall think fit," has preserved to the Sovereign the royal protective prerogative, in accordance with ancient usages of the realm and of her Majesty's royal predecessors, to satisfy the just demand of the subject, without his being forced to incur the expense of litigation with the Sovereign; and in cases of doubt and difficulty referred to, it has deprived the Sovereign even of the power of choosing the court and venue previously possessed; therefore, such cases must now be let go before the judges or the jury for trial, and cannot be decided in private, and in their own favour by the parties themselves, whose misconduct or errors form the ground of the petition of right. Apparently, while such abuses are extant, we have not obliterated the tyranny of the Star Chamber.

As to malice, it is not necessary that it should be alleged, for where a party, no matter how dignified or exalted a personage, acts illegally, malice is presumed. (See Phillips on Evidence).

Your commentator urges an assumption to supercede trial by jury—it is unnecessary to say more on that head, than that the British constitution repudiates such a doctrine. I claim, therefore, as a British subject, the benefit of the law, and that everything be

proved before the proper judicial tribunal which I have chosen, and which no subsequent section of the act can be so construed as to have repealed or nullified. To make sect. 2 repeal or nullify sect. 1, is such an absurdity as must provoke the disapproval of every British subject, and especially any individual who is excluded from the remedial provisions of the Petitions of Right Act, by an order of the Secretary of State for the Home Department, forbidding a writ to be issued out of that court at the suit of that particular individual.

There is no difficulty in seeing that the party injured is the proper party to call Sir George Grey, as her Majesty's Secretary of State, to account "for the errors or misconduct by which the Queen has been advised by him, and induced to do a temporary injustice," as well as for the injuries resulting therefrom. Sir George Grey, as Secretary of State, by his advice to the Queen, "not to let right be done in the petition of right," sets himself up above all law, judges, jury, courts of appeal, and even the constitution itself, to which her Majesty has sworn allegiance.

The comment made on sect. 20 has only strengthened the subject's right. The Petitions of Right Act having been superadded to the common-law right of the subject, does not deprive him of the right which he previously had "ex debito justitiæ," of proceeding against the Crown, but secures it against the possibility of the Crown's encroachments, or the subject being circumvented, as in *Re Perring* (2 M. & W. 873), by the Crown choosing the court. It is well known that the rights and liberties of British subjects are not depending on the mercy or discretion of even the Crown itself, much less of Sir George Grey, as Secretary of State, or any adviser of the Crown, for the laws of this country are our birthrights.

GEORGE O'MALLEY IRWIN.

THE COMMITTEE ON LAW REPORTING.—The committee appointed at the meeting of the Bar held in Lincoln's-inn Hall on the 2nd December, 1863, under the presidency of the Attorney-General, to prepare a plan for the amendment of the present system of preparing, editing, and publishing reports of judicial decisions, and to report thereon to a future meeting of the Bar, have issued the following circular to the members of the Bar:—"The committee thus appointed are anxious, in order the better to discharge the duty intrusted to them, to collect the opinion of the Profession upon the subject of law reporting; and for that purpose the committee are desirous of receiving any observations which you, either alone, or in conjunction with others, may be so obliging as to make upon what, in your opinion, are the advantages or disadvantages of the present system, and also any suggestions, either as to the principle or details of any amendment of the existing system which you may think desirable. The committee will meet on Thursday, the 18th February next, to consider any suggestions with which they may have been favoured in the meantime."

JURIDICAL SOCIETY.—A meeting of this Society took place at its rooms, 4, St. Martin's-place, Trafalgar-square, on Monday, the 1st February, W. M. Best, Esq., V. P., in the chair, when Mr. C. Clark read a paper on "The Principles that ought to govern the Conduct of Neutrals and Belligerents." The Chairman having addressed the meeting, the discussion on the paper was adjourned, on the motion of Mr. Westlake.

DEATH OF SIR WILLIAM ATHERTON, KNT.—Sir William Atherton, who was compelled last year to resign his high office of her Majesty's Attorney-General, in consequence of ill-health, died on the 22nd January.

EQUITY SITTINGS, AFTER HILARY TERM.

Court of Chancery.

Before the LORD CHANCELLOR.

At Lincoln's Inn.

Tuesday Feb. 9	First Seal.—Appeal Motions and Appeals.
Wednesday 10	Petitions and Appeals in Bankruptcy and Appeals.
Thursday 11	Appeals.
Friday 12	Appeals.
Saturday 13	Appeals in Bankruptcy and Appeals.
Monday 15	Appeals.
Tuesday 16	Appeals.
Wednesday 17	Appeals in Bankruptcy and Appeals.
Thursday 18	Second Seal.—Appeal Motions and Appeals.
Friday 19	Appeals.
Saturday 20	Appeals in Bankruptcy and Appeals.
Monday 22	Appeals.
Tuesday 23	Appeals.
Wednesday 24	Appeals in Bankruptcy and Appeals.
Thursday 25	Third Seal.—Appeal Motions and Appeals.
Friday 26	Appeals.
Saturday 27	Appeals in Bankruptcy and Appeals.
Monday 29	Appeals.
Tuesday .. March 1	Appeals.
Wednesday 2	Appeals in Bankruptcy and Appeals.
Thursday 3	Fourth Seal.—Appeal Motions and Appeals.
Friday 4	Appeals.
Saturday 5	Appeals in Bankruptcy and Appeals.
Monday 7	Appeals.
Tuesday 8	Appeals.
Wednesday 9	Appeals in Bankruptcy and Appeals.
Thursday 10	Fifth Seal.—Appeal Motions and Appeals.
Friday 11	Appeals.
Saturday 12	Appeals in Bankruptcy and Appeals.
Monday 14	Appeals.
Tuesday 15	Appeals.
Wednesday 16	Appeals in Bankruptcy and Appeals.
Thursday 17	Sixth Seal.—Appeal Motions and Appeals.
Friday 18	Petitions and Appeals.
Saturday 19	Appeals in Bankruptcy and Appeals.

N.B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Tuesday Feb. 9	First Seal.—Appeal Motions and Appeals.
Wednesday 10	Appeals.
Thursday 11	Appeals.
Friday 12	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 13	Appeals.
Monday 15	Appeals.
Tuesday 16	Appeals.
Wednesday 17	Appeals.
Thursday 18	Second Seal.—Appeal Motions and Appeals.
Friday 19	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 20	Appeals.
Monday 22	Appeals.
Tuesday 23	Appeals.
Wednesday 24	Appeals.
Thursday 25	Third Seal.—Appeal Motions and Appeals.
Friday 26	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 27	Appeals.
Monday 29	Appeals.
Tuesday .. March 1	Appeals.
Wednesday 2	Appeals.

Thursday 3	Fourth Seal.—Appeal Motions and Appeals.
Friday 4	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 5	Appeals.
Monday 7	Appeals.
Tuesday 8	Appeals.
Wednesday 9	Appeals.
Thursday 10	Fifth Seal.—Appeal Motions and Appeals.
Friday 11	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 12	Appeals.
Monday 14	Appeals.
Tuesday 15	Appeals.
Wednesday 16	Appeals.
Thursday 17	Sixth Seal.—Appeal Motions and Appeals.
Friday 18	Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 19	Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Chancery-lane.

Tuesday Feb. 9	First Seal.—Motions and General Paper.
Wednesday 10	General Paper.
Thursday 11	General Paper.
Friday 12	General Paper.
Saturday 13	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday 15	General Paper.
Tuesday 16	General Paper.
Wednesday 17	General Paper.
Thursday 18	Second Seal.—Motions and General Paper.
Friday 19	General Paper.
Saturday 20	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday 22	General Paper.
Tuesday 23	General Paper.
Wednesday 24	General Paper.
Thursday 25	Third Seal.—Motions and General Paper.
Friday 26	General Paper.
Saturday 27	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday 29	General Paper.
Tuesday .. March 1	General Paper.
Wednesday 2	General Paper.
Thursday 3	Fourth Seal.—Motions and General Paper.
Friday 4	General Paper.
Saturday 5	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday 7	General Paper.
Tuesday 8	General Paper.
Wednesday 9	General Paper.
Thursday 10	Fifth Seal.—Motions and General Paper.
Friday 11	General Paper.
Saturday 12	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday 14	General Paper.
Tuesday 15	General Paper.
Wednesday 16	General Paper.
Thursday 17	Sixth Seal.—Motions and General Paper.
Friday 18	General Paper.
Saturday 19	Petitions, Short Causes, Adjourned Summonses, and General Paper.

N.B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Lincoln's Inn.

Tuesday Feb. 9	First Seal.—Motions, Adjourned Summonses, and General Paper.
Wednesday 10	General Paper.
Thursday 11	Petitions, Adjourned Summonses, and General Paper.
Friday 12	Short Causes, Adjourned Summonses, and General Paper.
Saturday 13	General Paper.
Monday 15	Second Seal.—Motions, Adjourned Summonses, and General Paper.
Tuesday 16	Petitions, Adjourned Summonses, and General Paper.
Wednesday 17	Short Causes, Adjourned Summonses, and General Paper.
Thursday 18	General Paper.
Friday 19	Third Seal.—Motions, Adjourned Summonses, and General Paper.
Saturday 20	Petitions, Adjourned Summonses, and General Paper.
Monday 22	Short Causes, Adjourned Summonses, and General Paper.
Tuesday 23	General Paper.
Wednesday 24	Fourth Seal.—Motions, Adjourned Summonses, and General Paper.
Thursday 25	Petitions, Adjourned Summonses, and General Paper.
Friday 26	Short Causes, Adjourned Summonses, and General Paper.
Saturday 27	General Paper.
Monday 29	Fifth Seal.—Motions, Adjourned Summonses, and General Paper.
Tuesday .. March 1	Petitions, Adjourned Summonses, and General Paper.
Wednesday 2	Short Causes, Adjourned Summonses, and General Paper.
Thursday 3	General Paper.
Friday 4	Sixth Seal.—Motions, Adjourned Summonses, and General Paper.
Saturday 5	Petitions, Adjourned Summonses, and General Paper.
Monday 7	Short Causes, Adjourned Summonses, and General Paper.
Tuesday 8	General Paper.
Wednesday 9	Seventh Seal.—Motions, Adjourned Summonses, and General Paper.
Thursday 10	Petitions, Adjourned Summonses, and General Paper.
Friday 11	Short Causes, Adjourned Summonses, and General Paper.
Saturday 12	General Paper.
Monday 14	Eighth Seal.—Motions, Adjourned Summonses, and General Paper.
Tuesday 15	Petitions, Adjourned Summonses, and General Paper.
Wednesday 16	Short Causes, Adjourned Summonses, and General Paper.
Thursday 17	General Paper.
Friday 18	Ninth Seal.—Motions, Adjourned Summonses, and General Paper.
Saturday 19	Petitions, Adjourned Summonses, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir JOHN STUART.

At Lincoln's Inn.

Tuesday Feb. 9	First Seal.—Motions and Causes.
Wednesday 10	Causes.
Thursday 11	Petitions and Causes.
Friday 12	Short Causes and Causes.
Saturday 13	Causes.
Monday 15	Second Seal.—Motions and Causes.
Tuesday 16	Petitions and Causes.
Wednesday 17	Short Causes and Causes.
Thursday 18	Causes.
Friday 19	Third Seal.—Motions and Causes.
Saturday 20	Petitions and Causes.
Monday 22	Short Causes and Causes.
Tuesday 23	Causes.
Wednesday 24	Fourth Seal.—Motions and Causes.
Thursday 25	Petitions and Causes.
Friday 26	Short Causes and Causes.
Saturday 27	Causes.

Monday 29	Causes.
Tuesday .. March 1	Fourth Seal.—Motions and Causes.
Wednesday 2	Petitions and Causes.
Thursday 3	Short Causes and Causes.
Friday 4	Causes.
Saturday 5	Causes.
Monday 7	Fifth Seal.—Motions and Causes.
Tuesday 8	Petitions and Causes.
Wednesday 9	Short Causes and Causes.
Thursday 10	Causes.
Friday 11	Sixth Seal.—Motions and Causes.
Saturday 12	Petitions and Causes.
Monday 14	Short Causes and Causes.
Tuesday 15	Causes.
Wednesday 16	Causes.
Thursday 17	Sixth Seal.—Motions and Causes.
Friday 18	Petitions and Causes.
Saturday 19	Short Causes and Causes.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

Before the Vice-Chancellor Sir W. P. WOOD.

At Lincoln's Inn.

Tuesday Feb. 9	First Seal.—Motions and General Paper.
Wednesday 10	General Paper.
Thursday 11	Petitions, Short Causes, and General Paper.
Friday 12	General Paper.
Saturday 13	Second Seal.—Motions and General Paper.
Monday 15	General Paper.
Tuesday 16	General Paper.
Wednesday 17	Third Seal.—Motions and General Paper.
Thursday 18	General Paper.
Friday 19	Petitions, Short Causes, and General Paper.
Saturday 20	General Paper.
Monday 22	Fourth Seal.—Motions and General Paper.
Tuesday 23	General Paper.
Wednesday 24	General Paper.
Thursday 25	Fifth Seal.—Motions and General Paper.
Friday 26	General Paper.
Saturday 27	Petitions, Short Causes, and General Paper.
Monday 29	General Paper.
Tuesday .. March 1	General Paper.
Wednesday 2	Fourth Seal.—Motions and General Paper.
Thursday 3	General Paper.
Friday 4	Petitions, Short Causes, and General Paper.
Saturday 5	General Paper.
Monday 7	General Paper.
Tuesday 8	General Paper.
Wednesday 9	Fifth Seal.—Motions and General Paper.
Thursday 10	General Paper.
Friday 11	Petitions, Short Causes, and General Paper.
Saturday 12	General Paper.
Monday 14	General Paper.
Tuesday 15	General Paper.
Wednesday 16	Sixth Seal.—Motions and General Paper.
Thursday 17	General Paper.
Friday 18	Petitions, Short Causes, and General Paper.
Saturday 19	General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

CIRCUITS OF THE JUDGES.

(Mr. Justice MELLOR will remain in London.)

	NORFOLK.	HOMER.	S. WALES.	N. WALES.	WESTERN.	NORTHERN.	MIDLAND.	OXFORD.
SPRING CIRCUITS, 1864.	C. J. Cockburn J. Crompton	L. C. J. Erle L. C. B. Pollock	J. Williams	B. Channell	B. Martin B. Bramwell	J. Williams J. Shee	J. Blackburn	J. Keating B. Pigott
Wednesday, Feb. 24								
Saturday, 27								
Tuesday, Mar. 1	Oakham		Haverfordw. & Town		Winchester	Durham	Warwick	Reading Oxford
Wednesday, 2	Leicester and	Hertford						
Thursday, 3	[Borough		Cardigan			Newcastle &		Worcester & City
Friday, 4					Dorchester	[Town	Derby	
Monday, 7	Northampton	Chesham	Cardmarthen		Exeter & City	Carlisle		Stafford
Tuesday, 8								
Wednesday, 9							Nottingham	
Thursday, 10	Aylesbury						[& Town	
Friday, 11						Appleby		
Saturday, 12			Swansea			Lancaster	Lincoln and	
Monday, 14	Bedford	Maldstone			Bodmin		[City	
Wednesday, 16				Welchpool				
Thursday, 17	Huntingdon				Taunton	Liverpool		Shrewsbury
Friday, 18								
Saturday, 19	Cambridge			Bala			York & City	
Monday, 21		Lewes						Hereford
Tuesday, 22				Ruthin				
Wednesday, 23	Bury St. Ed.				Devizes			
Thursday, 24								
Friday, 25				Beaumaris				
Saturday, 26			Brecon					Monmouth
Monday, 28	Norwich and	Kingston		Carnarvon	Bristol			
Wednesday, 30	[City		Presteign					Gloucester & City
Thursday, 31				Mold				
Saturday, April 2			Chester &	Chester &	[City			

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The Jurist

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FEBRUARY 13, 1864.

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THE JURIST.

LONDON, FEBRUARY 13, 1864.

THE Home Secretary has lost no time in endeavouring to remove from our law the possibility of a recurrence of the scandal caused by the case of George Victor Townley, to which we drew attention in a recent number (*ante*, p. 23). He has brought the following bill into the House of Commons:—

"Sect. 1. The 1st section of the 3 & 4 Vict. c. 54, is hereby repealed.

"2. If any person while imprisoned in any prison, or other place of confinement, under any sentence of death, transportation, penal servitude, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour, or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order by any justice or justices of the peace or under any other than civil process, shall appear to be insane, it shall be lawful, if such person is confined in a prison to which visiting justices are appointed, for two or more of the visiting justices of such prison, or if such person is in any other place of confinement, for two or more justices of the peace of the county, city, borough, or place in which such place of confinement is situate, and such visiting or other justices are hereby required to call to their assistance two physicians or surgeons, or one physician and one surgeon, duly registered as such respectively, under the provisions of an act passed in the session of the 21 & 22 Vict. c. 90, and to be selected by them for that purpose, and to inquire, with their aid, as to the insanity of such person; and if it shall be duly certified by such justices, or any two of them, and such physicians or surgeons, or such physician and surgeon, that such person is insane, one of her Majesty's Principal Secretaries of State may, upon receipt of such certificate, if he shall think fit, direct, by warrant under his hand, that such person shall be removed to such lunatic asylum or other proper receptacle for insane persons as the said Secretary of State may judge proper and appoint; and every person so removed under this act, or already removed and in custody under any former act relating to insane prisoners not under civil process, shall remain in confinement in such asylum or other proper receptacle as aforesaid, or in any other lunatic asylum or other proper receptacle to which such person may be removed by any like warrant which the Secretary of State is hereby empowered to issue, if he shall think fit, until it shall be duly certified to the said Secretary of State by two physicians or surgeons, or one physician and one surgeon, duly registered as aforesaid, that such person is sane, and upon the receipt of such last-mentioned certificate the said Secretary of State is hereby authorised to issue a warrant under his hand directing, if the period of imprisonment or custody of such person shall have expired, that he or she shall be discharged, or if such person shall still remain subject to be continued in custody, that he or

she shall be removed to any prison or other place of confinement in which he or she may be lawfully confined; provided, that nothing in this act contained shall be construed to repeal the 38th section of the act of the 16 & 17 Vict. c. 96, or any part thereof.

"3. All the provisions of the first-mentioned act which are not hereby repealed, and all the provisions of an act passed in the session of the 23 and 24 Vict., intituled, 'An Act to make better Provision for the Custody and Care of Criminal Lunatics,' shall apply to lunatics removed under this act in all respects as if they had been removed under the section of the first-mentioned act which is hereby repealed."

The effect of this will be to repeal the 1st section of the 3 & 4 Vict. c. 54, and substitute a fresh enactment, by which the certificate of insanity must come from two of the visiting justices, and from two medical men chosen by those justices, and duly registered under the Medical Act; and, when given, it is not to be final or conclusive on the Home Secretary, who is bound to act on it only "if he thinks fit."

It is impossible to disapprove of the principle of this bill; the only question is, whether it goes far enough. After all, it leaves the sanity of a convicted murderer or other criminal, and his consequent escape from punishment, to be determined by a *secret* tribunal; and although it may be said that such has ever been the practice, our experience of it,—especially of late years, when such extravagant notions on the subject of insanity are found in so many members of the medical profession, and such strange sympathy with criminals in general pervades the community—is hardly such as to enamour the community.

The law will, doubtless, be altered, so as to prevent a repetition of the Townley scandal; but the whole affair gives rise to a more important, and not very agreeable reflexion, namely, what is the exact value of that medical testimony which we see every day adduced in our courts on the most serious questions, and too often received as oracular. Look at Townley's case as it now stands. An individual is indicted for murder, and the fashionable defence of insanity is set up. Dr. Winslow—a gentleman of unquestioned respectability, and of large experience in the treatment of the insane—deposes to the fact, as also does the surgeon of the prison—a gentleman who afterwards makes the admission, that almost until the moment of trial he had not made up his mind on the subject. The prisoner is convicted, in manifest contempt of Dr. Winslow and his (scientific?) theory of moral insanity, uncontrollable impulse, &c. As, however, the judge thought some inquiry on the subject necessary, the Home Secretary issues a commission to the Commissioners in Lunacy to inquire into it, who make the following report:—

"The result of the examination of the officials of the prison, of which the detail will be found appended to our report, may be stated briefly as in effect establishing, without dispute, that there has been substantially no change in the prisoner's mental state since the trial; that such difference or alteration as may have been noted has been an improvement; and that he has been altogether more at ease, more re-

signed, and at times even cheerful, since the sentence was passed upon him. Not at any time since he was first brought to the gaol, according to the testimony of all who have had the means of watching him closely, does he appear to have been more rational than he is at present.

"In the endeavour to form a satisfactory opinion as to his existing mental state, we have found it impossible to exclude the consideration of what his mental condition had been during the entire period of his imprisonment. What it is now it has been throughout; and the detail of what was elicited from him at our interviews, appended to this report, is probably sufficiently ample to enable the Secretary of State to form an opinion for himself as to the prisoner's moral condition, the views entertained by him of the murder he committed, the motives that impelled him to it, and the reasons by which he justifies it. We have to remark, that generally his manner during these interviews, with one or two exceptions which we have noted, was remarkably calm, quiet, and self-possessed; and though he seems to have had no difficulty in at once, from the questions put to him, correctly inferring the object and drift of our examination, we saw not the least grounds of suspecting him of any intention to mislead us by putting on a manner not natural to him, or feigning what he did not feel.

"In view of the extravagant opinions thus deliberately professed by him, of his extraordinarily perverted moral sense, and of the hereditary taint alleged, and apparently proved, to have existed in the family of the prisoner's grandmother, we cannot consider him to be of sound mind; but his views of right and wrong, false as they are, appear to have been coherently acted upon, and with a full sense of what they involved. He reasons now, as he acted in committing the murder. Upon the point of his alleged belief in a conspiracy against him we pressed him very closely; but we could not satisfy ourselves that this was in the nature of a delusion. It seems certain that some members of the deceased's family objected to his engagement with her, while others favoured it, or were indifferent; and that the former had obtained an influence over her some little time before her letter was written, which was meant finally to put an end to it. Hence he believed that she had been acted upon by a conspiracy, which was meant 'in the tenderest point' to injure him; and all the questions which we put upon this part of the case failed to draw from him anything that could bear other construction than that he had taken a disordered and morbid view of an actual occurrence.

"Being of opinion, therefore, that the prisoner continues to be now in the same mental state as when he committed the murder and underwent his trial, we think, that, applying the law as laid down by Mr. Baron Martin to this case, the prisoner George Victor Townley was justly convicted.

"W. G. CAMPBELL.

"JAMES WILKES.

"JOHN FORSTER."

The Home Secretary, of course, could not act on this document: but in the meantime two justices

of the peace, selected by the prisoner's agent from the whole county and borough of Derby, and two medical men from the whole kingdom (one of them, as it now appears, not on the medical register, although he has, it is said, frequently signed similar documents), send a formal certificate to the Secretary of State that the prisoner is "insane"—an expression thoroughly ambiguous, for it may mean either that the prisoner is not in a state to be responsible for his actions, or that his mind is unsound sufficiently to support a commission of lunacy; which latter is no impeachment whatever of the propriety of the verdict. This precious document the Home Secretary holds (erroneously, as we trust we have shewn in our former article on this subject) obligatory on him, under the 3 & 4 Vict. c. 54, s. 1, and makes an order for the transfer of the prisoner to an asylum for the insane. After this has been done, and consequently when the mischief was completed, a new light breaks in on the Home Secretary. With the concurrence of the Lord Chancellor, he issues a fresh commission of inquiry, addressed to the eminent medical persons whose names are appended to it, who make the following report, at total variance with that of the Commissioners in Lunacy:—

"Bethlehem Royal Hospital, Jan. 28, 1864.

"We, the undersigned, having been requested by Secretary Sir George Grey to examine into the state of mind of George Victor Townley, a prisoner under sentence of death in Bethlehem Hospital, and to report our opinion as to whether he is of unsound mind, report as follows:—

"We have carefully considered the copies of papers supplied to us, and on the 26th and 27th days of this month we have had two lengthened interviews with the prisoner, and the conclusion at which we have unanimously arrived is that George Victor Townley is of sound mind.

"The demeanour of the prisoner during each interview was calm and self-possessed, with the exception that at the commencement of the second interview he displayed and expressed annoyance at the repeated examinations to which he was being subjected. Neither in mode of speech, nor in look and conduct, was there any sign of insanity observable in him.

"His prompt apprehension of the purport of our questions, and the manner in which he replied to them, indicated the possession of good intellectual capacity.

"The opinions which he avows that men, as the creatures of circumstance, are not justly responsible for their actions, are opinions at which he appears to have arrived by ordinary processes of reasoning.

"That he knows that he is responsible for the commission of crime is made clear by his own words, used to us, 'I expected to be hanged because I killed her, and am not such a fool as not to know that the law hangs for murder. I did not think of it at the time, or I should not have done it.'

"We think that this statement, that he killed Miss Goodwin to repossess himself of her as his property was an afterthought, adopted to justify his crime. He acknowledged to us that he had come to this opinion after the deed was done.

"The supposition that he killed Miss Goodwin under the influence of the opinion that in so doing he was repossessing himself of her as his property is inconsistent with his own repeated statement to us that, without forethought of any kind, he killed her under the influence of sudden impulse.

"He explained to us that, by killing Miss Goodwin to repossess himself of her as his property, he simply meant that he took her out of the hands of his enemies, and placed her in a position where she would wait, and where he would rejoin her when he died.

"The prisoner endeavoured to represent the catastrophe to us as due to the influence of sudden impulse, but the details which we elicited from him shew that he used threats of murder for some time before he struck the first blow. We think that his clear memory of the events attending the crime, and also the attempts which he has made to misrepresent the state of his mind and memory at the time of these events, are evidence of his sanity.

"We are of opinion that he does not entertain any delusion on the subject of a conspiracy against him, but that he uses the term 'conspiracy' to express the real opposition which he has met with from the members of Miss Goodwin's family to his engagement with her, and also to express the feeling that they are hostile to him.

"We have considered the evidence of hereditary predisposition to insanity, given in the papers supplied to us, and our opinion of the state of the prisoner's mind has not been altered thereby.

"We examined the apothecary, and also the chief attendant at Bethlehem, as to the conduct of Townley since he has been in detention at the hospital—both of them have had him under daily and special observation—and they assure us, that neither in conduct, manner, nor conversation, had they been able to observe in him any of the peculiarities which they are in the habit of remarking among the insane.

(Signed)

"W. CHARLES HOOD, M.D., Visitor of Chancery Lunatics.

"JOHN CHARLES BUCKNILL, M.D., Visitor of Chancery Lunatics.

"JOHN MEYER, M.D., Medical Superintendent of the Criminal Lunatic Asylum.

"W. HARRIS, M.D., Medical Superintendent of the Royal Bethlehem Hospital."

On receipt of this certificate, which, if true, disproves the allegation that Townley was insane, in any sense of that word known to the law, the Home Secretary deems it improper to send Townley back to his prison, and let justice take its course; and accordingly, still with the concurrence of the Lord Chancellor, commutes his sentence to penal servitude for life, the favourite punishment of the day, the inefficiency of which is but too well known; and which practically means, that in the course of a few years, Mr. Townley will be at liberty, with a ticket of leave, if not among ourselves, at least in some of our colonies, to seek some other Miss Goodwin to be the object of his affections or his crimes.

The efforts that are constantly made to rescue crimi-

nals from the punishment, not only of death, but every other, and their too frequent success, together with the general operation of the ticket-of-leave system, must necessarily tend to increase crime, from the conviction they generate in the minds of the criminal portion of the community of the uncertainty of the infliction of punishment for any offence, however clearly proved. If it were once distinctly understood that the law means what it says—that murder shall be punished with death, means that murder shall be punished with death; that penal servitude for life, or a specified term of years, means penal servitude for life, or for that term of years; and that those persons who wantonly interfere to save a criminal from just punishment are bad citizens, and enemies to the peace of their country, we should soon see the establishment of a healthy state of society.

Metislog.

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The work contains precedents on the following subject:—Conditions of Sale, Agreements, Purchase Deeds, Covenants for Production, Mortgages, Bills of Sale, Leases, Settlements, Wills, Disclaimers, Appointments of New Trustees, Disentailing Assurances, Partition Deeds, Bonds, Releases and Indemnities, Copartnership Deeds, Composition Deeds, Memorials, Notices, Powers of Attorney and Miscellaneous Deeds.

The precedents under these different heads are numerous, and comprehend nearly every instrument ordinarily used in conveyancing practice. They are drawn in clear and precise language, and great care has evidently been taken in their preparation, for while the authors seem never to adopt the dangerous, or at any rate unnecessary, innovations which are to be found in some collections of precedents, they have at the same time avoided the verbiage which disgraced the forms in the older books, and which has, owing to such publications as the present, become almost obsolete.

To the precedents are also appended very useful notes, calling the attention of the draftsman to points which, in the hurry of practice, may escape his recollection, and which could not be so well or so usefully noticed in the dissertation.

At the end of the work is an Appendix, containing some recent acts, which it is important that the conveyancer should always have before him, viz. the 23 & 24 Vict. c. 145 (Lord Cranworth's Act); 25 & 26 Vict. c. 53 (the Lord Chancellor's Land Registry Act); and the 25 & 26 Vict. c. 67 (the Declaration of Title Act, 1862, another of Lord Cranworth's Acts). These acts are prefaced by some observations of Mr. Roger Walters on the Land Registry Act and Declaration of Title Act.

The latter act seems to be a complete failure, as not a single declaration of title has been made under it; the failure of the former act has not been complete, but partial.

Mr. Watters says, that it appears from a report made to Parliament, that there have been only thirty-four applications for registration; and of these only three titles have been actually registered.

"We are not informed," he adds, "how many of these applications failed; but, of course, the costs of failures must be taken into consideration in estimating the public benefits arising from the measure." And in answer to those who impute the failure of the act to the jealousy or self-interest of the legal profession, he says, "Before seeking to impute the want of success of the measure to the opposition of the profession, it would be well to know how many of the thirty-four applicants for registration were members of the majority in the two Houses of Parliament who voted in favour of the bill."

Whatever may be the cause of the total, or almost total, failure of the acts of the two noble and learned Lords last referred to, one thing is certain, that the practice of conveyancers remains the same, and that such books as the *Collection of Precedents* of Mr. Priedaux and his able colleague, Mr. Whitcombe, will still be the guides, by reference to which the various instruments by which property is disposed of or affected must as heretofore be framed.

Observations on the recent Decisions in Honywood v. Forster and Gibbons v. Snape, that, under the Fines and Recoveries Act, a Copyhold disentailing Deed must be entered on the Court Rolls within Six Months. By S. SPENCER WIGG, Esq., of Gray's Inn, Barrister-at-Law. 8vo., pp. 24. [Sweet.]

THE 41st section of the Fines and Recoveries Act provides, with respect to lands not of copyhold tenure, that no disposition of lands (except certain leases) shall have any operation under the act, unless the assurance be inrolled in Chancery within six calendar months after execution; and the 46th section provides, that the consent of a protector to a disposition of lands under the act, if given by a distinct deed, shall be void, unless the deed is inrolled at or before the time when the assurance is inrolled.

The 50th section enacts, "that all the previous clauses in this act, so far as circumstances and the different tenures will admit, shall apply to lands held by copy of court roll, except that a disposition of any such lands under this act by a tenant in tail thereof, whose estate shall be an estate at law, shall be by surrender; and except that a disposition of any such lands by a tenant in tail thereof, whose estate shall be merely an estate in equity, may be made either by surrender or by a deed as hereinafter provided; and except so far as such clauses are otherwise altered or varied by the clauses hereinafter contained."

The 51st section provides, that if the consent of the protector to the disposition of copyhold lands by a tenant in tail is given by deed, the deed shall, at or before the time when the surrender is made, be executed by the protector, and produced to the lord or steward, and the consent shall be void unless the deed is so executed and produced; and the steward is to indorse an acknowledgment of the production of the deed within the time limited, and inrol the deed and indorsement. And the indorsement, purporting to be signed by the steward, is to be *prima facie* evidence of the facts. By sect. 52, provision is made for taking the consent of the protector in person.

By sect. 53, an equitable tenant in tail of copyholds "shall have full power by deed to dispose of such lands

under this act, in the same manner in every respect as he could have done if they had been of freehold tenure; and all the previous clauses in this act shall, so far as circumstances will admit, apply to the lands in respect of which any such equitable tenant in tail shall avail himself of this present clause, and the deed by which the disposition shall be effected shall be entered on the court rolls of the manor of which the lands thereby disposed may be parcel. And if there shall be a protector to consent to the disposition, and such protector shall give his consent by a distinct deed, the consent shall be void, unless the deed of consent be executed by the protector either on or at any time before the day on which the deed of disposition shall be executed by the equitable tenant in tail; and such deed of consent shall be entered on the court rolls, and it shall be imperative on the lord, &c., when required so to do, to enter such deed or deeds on the court rolls; and he shall indorse on each deed a memorandum, signed by him, testifying the entry of the same on the court rolls: provided, that every deed by which lands held by copy of court roll shall be disposed of under this clause by an equitable tenant in tail thereof, shall be void against any person claiming such lands, or any of them, for valuable consideration, under any subsequent assurance, duly entered on the court rolls, unless the deed of disposition by the equitable tenant in tail be entered on the court rolls before the subsequent assurance shall have been entered."

SECT. 54 provides, "that in no case where any disposition, under this act, of lands held by copy of court roll, by a tenant in tail thereof, shall be effected by surrender or by deed, shall the surrender, or the memorandum, or a copy thereof, or the deed of disposition, or the deed, if any, by which the protector shall consent to the disposition, require inrolment otherwise than by entry on the court rolls."

In *Honywood v. Forster* (7 Jur., N. S., part 1, p. 1264; 30 Beav. 1), the Master of the Rolls held, that a deed of disposition by an equitable tenant in tail of copyholds did not operate under the 53rd section of the act, because it was not entered on the court rolls within six months after execution; and the reasons given for the decision were, that the Legislature could not have intended to allow an indefinite time, because the consequence of such allowance would be, that an apparent title and enjoyment under the settlement might be defeated at any time within twenty, or possibly forty, years from the death of the tenant in tail who executed the assurance—that a reasonable time, and therefore, and also because all the previous clauses were to apply so far as circumstances would admit, the time expressly fixed by the act in other cases must have been intended.

This decision was followed by the Master of the Rolls, and on appeal by the Lords Justices, in the case of *Gibbons v. Snape* (9 Jur., N. S., part 1, p. 1096), the Court of Appeal adopting the reasons given by Sir J. Romilly in the earlier case.

The Fines and Recoveries Act came into operation thirty years ago, and during that time it is probable, that in very many cases the inrolment of deeds intended to operate under the 53rd section, has been delayed beyond six months, in reliance on the general opinion of the profession, that no time was limited by the act for the inrolment of such deeds.

The construction which has been adopted by the Court, appears to us to be clearly inconsistent with the language and meaning of the statute. In the clauses referring to copyholds, no time for inrolment is expressly limited; and if a limit is to be understood, it must either be in consequence of the importation by the 50th section, of something from the 41st section, or by inference from the policy of the act.

Now, the 41st section, so far as it could apply to copyholds, requires that the assurance shall be *inrolled in Chancery* within six calendar months after the execution thereof; but a deed intended to operate under the 53rd section, is by that section required to be *entered on the court rolls*, without any express limit of time. And the 54th section says, that such deed shall not require inrolment *otherwise* than by entry on the court rolls. The grammatical construction is clear and unquestionable. Inrolment in Chancery within six calendar months is dispensed with. Entry on the court rolls is substituted, and no time is limited. That this was understood, and intended to be the meaning and effect of the act, is abundantly clear from the circumstance, that wherever in the act inrolment in Chancery is mentioned, it is in connexion with the limit of time, but no limit is ever suggested in the case of copyholds. And in the provision for the disposition of a bankrupt's copyholds (sect. 59), the difference of intention is clearly and emphatically marked. "Every deed by which any commissioner, &c., shall, under this act, dispose of lands *not held by copy of court roll*, shall be void, unless inrolled in Chancery *within six calendar months after the execution thereof*; and every deed by which any commissioner, &c., shall under this act dispose of lands held by copy of court roll, shall be entered on the court rolls of the manor;" not a word being said in the case of copyholds of any limit of time.

The suggestion of hardship or inconvenience is unfounded. Purchasers are protected by the provision giving priority to the disposition which is first inrolled, whereas, in cases not within the act, not only heirs but purchasers for value, are still liable to be turned out of possession by the production of a secret conveyance, made possibly by a remainderman sixty or even a hundred years before it is acted on.

These are the broad grounds on which we agree with Mr. Wigg, in condemning the construction which has been put upon the statute; and these, with other arguments against that construction, will be found very ably stated in Mr. Wigg's Pamphlet.

O'KANE v. O'KANE AND VISCOUNT PALMERSTON.

THIS most disgraceful affair has come to a worthy termination. Shortly after the petition for dissolution of marriage was filed, in which the petitioner charged his wife with adultery, and the Prime Minister of the British empire, a married man living with his wife, and now in his eightieth year, as the partner in her crime, the petitioner claiming as damages the modest sum of 20,000*l.*, the lady filed an answer, denying that she ever was his wife, and also denying the adulterous acts. The co-respondent contented himself with obtaining an order of the Court for the particulars of the marriage, and of the times and places where the alleged acts of adultery were committed. Of this order the *deeply injured* husband took no notice for *two months*, and, at the expiration of that period, the respondent, by her counsel, Mr. W. Digby Seymour and Mr. Joyce, applied to the Court to take the petition off the file, and dismiss the suit, on the ground of non-compliance with that order. The sagacity of the judge, Sir J. P. Wilde, interposed with the observation that the identity in interest of the respondent and co-respondent could not be assumed; that as the respondent had no

hand in obtaining the order, she had no right to complain of its not having been complied with; but he granted a rule, calling on the petitioner to shew cause why he should not proceed in the suit, or, in default of his so doing, why the petition should not be dismissed. This rule came on for argument on the 2nd February, when Mr. G. Browne appeared for the respondent, and the Queen's Advocate for the co-respondent. Some affidavits were produced, among which was one from the petitioner's attorney, which spoke of the cause as having been "compromised," and set out the following, under the circumstances, truly iniquitous letter, addressed to him by the petitioner:—

"47, Moorgate-street, City, Jan. 16, 1864.

"MYSELF v. PALMERSTON AND O'KANE.

"Dear Sir,—Yielding to the advice of my friends, I have decided to drop the above suit, and I hereby instruct you to stay all further proceedings. I adopt this course solely for the sake of my young children, and not from any inability to establish the allegations contained in my petition, or to prosecute the suit to a successful conclusion, as the letters which I submitted to you, and the evidence laid before you, offered *prima facie* every probability of success. On the letters and correspondence, fortified by the opinion of counsel, you undertook the suit by my instructions, and I feel perfectly satisfied with your professional conduct, as well as that of your managing clerk, Mr. Weston, who was not deterred from undertaking the just cause by the frantic howl of a venial and corrupt press—the cause of right against might. I beg you to give the most complete contradiction to the assertion made by some of the London and other papers, that I was in the employment of either of you, my own resources and those of my friends having enabled me to live independent of such aid. I was lawfully married to my wife, the respondent in this suit, by a Catholic priest, regularly ordained, and acting with full jurisdiction, and celebrating the marriage with all the rites and ecclesiastical formalities of the Catholic Church. This could have been satisfactorily proved had the case gone into court. As to the alleged acts of adultery, the correspondence and other evidence would leave no doubt had the case gone to a jury.

"I am, yours truly,
(Signed) "T. J. O'KANE.

"Mr. Thomas Wells, Solicitor,
47, Moorgate-street, City."

The Queen's Advocate having asked for an adjournment, on the ground that he had not seen the affidavits, the case was adjourned till the 4th inst., when both the respondent and co-respondent denying that any compromise had been entered into by them, the petitioner's counsel explained that the arrangement spoken of was made between him and his friends, and withdrew the suit.

THE JUDGE ORDINARY then delivered judgment as follows:—"The suit must be dismissed. The petitioner came into court with his complaint, and he now retires from it without any imputation upon either of the other parties to the suit, and without any suggestion of an arrangement between himself and either of them, on grounds best known to himself, and in consequence of what he, by his counsel, calls an arrangement with his friends. It is, no doubt, much to be regretted that a man should be able to attack the character of a woman whom he calls his wife, and to hold her up to public censure without cause. Owing to the publicity which happily attends every step in our courts, that evil is unfortunately aggravated, but the remedy is to be found in the same

publicity. The chastity of the respondent, who has in vain challenged inquiry into, and proof of, the charges against her, has received no tarnish from this ordeal; and, as for the petitioner, he retires from the suit with the evil words still on his lips, and will probably meet with the censure of some, and with the contempt of many. The Court cannot part with this suit without one word respecting the co-respondent. It is a matter of great satisfaction to the Court, that a man never mentioned in England without just pride should have passed from its annals without a stain."

Later in the day,

Mr. W. D. Seymour said he had omitted to ask for costs, and he understood that a formal order was necessary.

JUDGE ORDINARY.—Certainly. The man who has presented a petition to this Court, and has voluntarily abandoned it, ought to pay the costs. The petition is accordingly dismissed.

MR. CHARLES RANN KENNEDY AND THE SWINFEN CASE.

WE long believed that we had heard the last of Mr. Charles Rann Kennedy and the *Swinfen* case. This, however, turns out a mistake, Mr. Kennedy having appealed to the Lords Justices against the decision of the Master of the Rolls, which set aside the deed executed in his favour by Mrs. Broun (alias Swinfen). The best elucidation of the affair will be to let the document speak for itself:—

"This indenture, made the 10th May, 1859, between Patience Swinfen, of Swinfen Hall, in the county of Stafford, widow, of the one part, and Charles Rann Kennedy, of the Inner Temple, London, barrister, of the other part: whereas, the said Patience Swinfen has for a long time past been engaged in legal proceedings in and about the defending and establishing her title to the estate hereinafter mentioned, and the said legal proceedings have been brought to a final conclusion, and her title to the said estate is now fully established; and whereas the said Charles Rann Kennedy has been engaged as her counsel in the said legal proceedings, and she, the said Patience Swinfen, desires to recompense him for his services as such counsel, and to convey to him the reversion of the said estate, subject to her own life interest therein, and chargeable as hereinafter appears: now, this indenture witnesseth, that, in consideration of the services rendered to her as aforesaid by the said Charles Rann Kennedy, and also in consideration of her esteem and friendship for the said Charles Rann Kennedy, she, the said Patience Swinfen, doth hereby, of her own free will, give, grant, and convey unto the said Charles Rann Kennedy and his heirs, all that her estate at Swinfen, near Lichfield, in the said county of Stafford, comprising a mansion-house and grounds and several farms near or adjoining thereto, all which said estate was devised to her, the said Patience Swinfen, by Samuel Swinfen, of Swinfen Hall aforesaid, and all the lands, hereditaments, rights, liberties, easements, privileges, rents, and profits whatsoever to the said estate belonging, or in anywise appertaining, or with the same now, or at any time hereintofore, demised, held, occupied, or enjoyed, or reputed, deemed, taken, or known as part or parcel thereof, with their appurtenances, and all the estate, right, title, interest, property, claim, and demand, both at law and in equity, of her, the said Patience Swinfen, in, to, or upon the said premises, and every part thereof, to have and to hold the said estate, mansion-house, grounds, farms,

land, hereditaments, and all and singular other the premises hereby given, granted, and conveyed, or expressed and intended so to be, unto the said Charles Rann Kennedy and his heirs, to the use of the said Patience Swinfen for the term of her natural life; and from and after the decease of the said Patience Swinfen, to the use of the said Charles Rann Kennedy, his heirs and assigns, subject to, and chargeable with, all such debts as shall be due and owing from the said Patience Swinfen at the time of her decease, not exceeding in the whole the sum of 10,000*l.*, and also subject to be chargeable with the payment of such sum or sums of money not exceeding in the whole the sum of 10,000*l.*, to such person or persons respectively as the said Patience Swinfen shall by her last will direct and appoint. In witness whereof the said parties hereto have set their hands and seals, the day and year first above written."

Mr. Kennedy admitted that the deed was drawn by himself, and it was attested by two attorneys at Birmingham, Messrs. Collis & Ure.

The appeal was heard on the 29th January, when Mr. Kennedy appeared in support of his own case.

Lord Justice KNIGHT BRUCE, in giving judgment, said—"The only question now before us, besides the costs of the suit, is, whether we should allow the deed to stand, or to set it aside, with consequential directions. The contents of the deed are alone sufficient to condemn it, on the assumption that the recitals contained in it are true; but, with respect to their truth, the defendant, who drew the instrument, cannot certainly complain. It is, however, not perhaps impossible to suppose the existence of circumstances, in point of fact, sufficient to support the deed in the defendant's favour. Are there, however, such circumstances in evidence before the Court? In my opinion, there are not. The deed was either a mere gift, or was executed in pursuance of a contract. As a gift, of course, it cannot be sustained between a client, whether man or woman, and the counsel of that client, who had been so recently engaged in professional and legal matters, such as have been mentioned, for recovering for his client the real estate itself, of which so valuable a portion formed the subject of the gift. Then, as to the question, whether it was in pursuance of a contract; the draft of the deed was drawn by the defendant himself, and there was no professional person consulted on behalf of the lady before she executed it, except Messrs. Collis & Ure, of Birmingham, her solicitors, in whose office, and under whose directions, the deed was executed on the 10th May. They saw her, and spoke to her, before her execution of it on that day. I am of opinion that, apart from all considerations of public policy, the lady had and has a right to complain, seriously and effectually, that she laboured under that want of sufficient advice, information, and assistance on the subject, before and when she executed the deed, which in my judgment was, and is, an instrument of great, substantial, and manifest impropriety, and from which the lady who executed it, however clever she may be, and probably is, has a plain right to be delivered, and against which relief could not be refused, without manifest discredit to the administration of justice."

Lord Justice TURNER concurring, the appeal was dismissed, with costs. (See the report at length in 10 Jur., part 1, p. 142.)

With the conduct of Mrs. Broun throughout this affair we have nothing to do. Whatever may be thought on that subject, it is most painful to see a gentleman of Mr. Kennedy's great learning and abilities in a position so thoroughly degrading. We hope, however, that it is not yet too late for him to retrieve

his character and position at the bar; and trust that, in any event, the *Swingen case* and the incidents accompanying it will prove a salutary warning to others.

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

HILARY TERM, 1864.

INTERMEDIATE EXAMINATION.

THE Examiners reported that the following gentlemen, whose names are arranged in alphabetical order, have passed the intermediate examination with distinction:—

William Charles Lovelace Bowling, aged twenty-two, articled to Mr. Egerton Isaacson, of Margate.

Charles Frederick Hird, aged twenty, articled to Messrs. Hird & Son, of London.

Thomas McMillin, aged twenty-five, articled to Mr. John McMillin, of London.

George Francis Riddiford, aged twenty-two, articled to Messrs. B. Wilton & Son, of Gloucester.

The number of candidates examined in this term was 78; of these, 68 were passed, and 10 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

FINAL EXAMINATION.

At the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

1. Cornelius Marshall Warmington, aged twenty-one, who served his clerkship to Mr. Frederick Blomfield Philbrick, of Colchester; Mr. Alexander Miller White, of Colchester; and Messrs. Hawkins, Bloxam, & Hawkins, of London.

2. Theodore Waterhouse, B.A., aged twenty-five, who served his clerkship to Messrs. Cookson & Wainwright, of London.

3. John Wills Chandler, aged twenty-five, who served his clerkship to Mr. Samuel Chandler, of Basingstoke.

4. Alfred Bright, M.A., aged twenty-three, who served his clerkship to Mr. Frederick Pardoe, of Bishop's Castle; and Messrs. Bell, Steward, & Lloyd, of London.

4. James William Gabb, B.A., aged twenty-five, who served his clerkship to Messrs. Woodhouse & Colborne, of Newport, Monmouthshire; Messrs. Gregory, Son, & Clark, of London; and Mr. Thomas Clark, of London.

4. James Adams Hewitt, aged twenty-one, who served his clerkship to Messrs. Edmonds & Sons, of Plymouth; and Messrs. Clowes & Hickley, of London.

4. Richard Bealy Smith, aged twenty-two, who served his clerkship to Mr. Richard Smith, of Bridge-water; and Messrs. Boyle & Son, of London.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—

To Mr. Warmington, the prize of the Honourable Society of Clifford's Inn.

To Mr. Waterhouse, the prize of the Honourable Society of Clement's Inn.

To Mr. Chandler, one of the prizes of the Incorporated Law Society.

To Mr. Bright, one of the prizes of the Incorporated Law Society.

To Mr. Gabb, one of the prizes of the Incorporated Law Society.

To Mr. Hewitt, one of the prizes of the Incorporated Law Society.

To Mr. Smith, one of the prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

Nicholas Albert Earle, aged twenty-three, who served his clerkship to Messrs. Earle, Son, Hopps, & Orford, of Manchester; and Messrs. J. E. & A. Fox, of London.

John Smythies Greene, aged twenty-one, who served his clerkship to Messrs. Greene & Partridge, of Bury St. Edmunds.

Richard Hewlett, aged twenty-two, who served his clerkship to Mr. William Antony Freston, of Stroud; and Messrs. Thomas White & Sons, of London.

Claude Ashley Anson Penley, aged twenty-two, who served his clerkship to Messrs. Coverdale, Lee, Collyer-Bristow, & Withers, of London.

Joseph Soames, aged twenty-three, who served his clerkship to Messrs. Soames & Cooke, of Wokingham; Mr. George Allington Charley, of Beaconsfield; and Mr. George James Eady, of London.

Sharon Grote Turner, aged twenty-one, who served his clerkship to Mr. Alfred Turner, of Red Lion-square, London.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the following candidates, whose names are placed in alphabetical order, that their answers to the questions at the examination were highly satisfactory, and would have entitled them to certificates of merit if they had been under the age of twenty-six:—

Samuel Harris, aged thirty-nine, who served his clerkship to Mr. George Stenning, of Tonbridge.

Thomas Martin, aged thirty-four, who served his clerkship to Messrs. Neal & Martin, of Liverpool.

Barnard Thomas, B.A., aged twenty-seven, who served his clerkship to Messrs. Thomas & Lewis, of Tewkesbury; and Mr. Alexander John Baylis, of London.

The number of candidates examined in this term was 122; of these 107 were passed, and 15 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,
London, Jan. 28, 1864.

Imperial Parliament.

HOUSE OF COMMONS.—Thursday, Feb. 4.

Mr. Brand gave notice, that on Monday next, the Secretary of State for the Home Department would move for leave to bring in a bill to amend the 3 & 4 Will. 4, c. 54, intitled "An Act for making further Provision for the Confinement and Maintenance of Lunatic Prisoners;" and that on Thursday next, his right hon. friend would move for leave to bring in a bill to amend the Penal Servitude Acts.

Mr. M. Gibson gave notice, that on Thursday next he would move the appointment of a select committee to inquire into the best method of dealing with the railway schemes proposed to be sanctioned within the limits of the metropolis, by bills to be introduced in the present session. As it was probable an arrangement might be made for the joint action of both Houses, he would place the exact words of the terms of reference on the table to-morrow. On Monday, he would lay on the table resolutions relating to the private business.

of the House, and also to the House fees, and would also move for leave to introduce bills to facilitate, in certain cases, the obtaining powers for the construction of railways, and to facilitate, in certain cases, the obtaining of further powers by railway companies.

Sir F. Kelly gave notice, that on Tuesday next he should move for leave to bring in a bill to provide a further appeal in criminal cases, and for the further amendment of the administration of the criminal law.

Mr. W. Stewart gave notice, that on this day fortnight he should move for leave to bring in a bill to abolish the punishment of death. He also gave notice of a bill for legalising the use of the metrical system.

Monday, Feb. 8.

Mr. Hadfield obtained leave to bring in a bill to amend the law relating to future judgments, statutes, and recognisances.

Sir George Grey, the Secretary for the Home Department, obtained leave to bring in a bill to amend the 3 & 4 Vict. c. 54, relative to insane criminals.

Tuesday, Feb. 9.

On the motion of Mr. Dodson, a select committee was appointed to inquire into the present system of registration of county voters for Members of Parliament in England and Wales, and whether any, and what, other provisions should be made for the registration of such voters.

Sir F. Kelly obtained leave to bring in a bill to amend an act of the session of the 11 & 12 Vict. c. 78, to provide a further appeal in criminal cases, and for the further amendment of the administration of the criminal law.

BOOK RECEIVED.

The Innkeepers' Legal Guide: what he must do, what he may do, and what he may not do. A Handy-book to the Liabilities, limited and unlimited, of Innkeepers, Ale-house Keepers, and Refreshment-house Keepers, &c., with verbatim copies of the Innkeepers' Limited Liability Act, the general Licensing Act, and Forms. By Richard T. Tidswell, M.A., Oxon, of the Inner Temple, Barrister-at-Law, Esq., Joint Author of "Law of Marriage and Divorce," and of "The Practice and Evidence in Divorce," &c.—Lockwood & Co. 1864.

NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE, WITH WHICH IS UNITED THE SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.—A meeting of this Society took place at its rooms, 3, Waterloo-place, Pall-mall, on Monday, the 1st February, Sir Fitzroy Kelly, Q. C., M. P., in the chair, when a paper was read by Mr. G. Harry Palmer, intitled, "Suggestions for the Amendment of the Law of Appeal in Criminal Cases." On the motion of Mr. Hume Williams, seconded by Mr. Burch Rosher, it was resolved that a discussion on the paper be taken on Monday, the 8th February.

Court Papers.

EQUITY CAUSE LISTS, AFTER HILARY TERM, 1864.

. The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—A. Abated—Adj. Adjourned—A. T. After Term—Ap. Appeal—C. D. Cause Day—Cl. Claim—C. Costs—D. Demurrer—E. Exceptions—F. C. Further Consideration—F. D. Further Directions—M. Motion—M. D. Motion for Decree—P. C. Pro Confesso—Pl. Plea—Ptn. Petition—R. Rehearing—Sp. C. Special Case—S. O. Stand Over—SA. Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

Goodricks v. Taylor (Pt. hd.)
Bury v. Bedford } (R., Jan. 11)
Bury v. Bedford }
Vickers v. Bell (S., Jan. 14)
Currie v. Larkins (S., Jan. 18)
Low v. Innes (W., Jan. 30)
L. C. Feb. 10

Bevan v. Habgood (W., Feb. 4)

CAUSES.

Baxendale v. West Midland Railway Co. (M D, part heard) L. C.
Foxwell v. Bostock (trial without a jury, part heard) L. C.

Before the Right Hon. the MASTER OF THE ROLLS.

CAUSES, &c.

Wedderson v. Green (M D, part heard)
Edmonds v. Lord Foley (F C)
Christie v. Johnstone (M D)
Dutton v. Latham (M D)
Greenough v. Shorrocks (MD)
Spittle v. Hughes (M D)
Lysaght v. Westmacott (M D)
Cotterill v. Cobbold (M D)
Wright v. Youngs (Cause)
Edwards v. Jones (M D)
Gully v. Wood (M D)
Boyd v. Radcliffe (M D)
Ormerod v. Rostron (F C)
Davidson v. Chalmers (M D)
Markwell v. Bull (M D)
North-eastern Railway Co. v. Bray (M D)
David v. Jones (Cause)
Braithwaite v. Kearns (M D)
Brooke v. Lord Mostyn (Can.)
Feb. 15
Hendrick v. Wood (M D)
Brown v. Simpson (M D)
Shorting v. Cobbold (M D)
Mackintosh v. Stuart (Can.)
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NOTICE.

The Office of THE JURIST is removed to No. 39, BELL YARD, TEMPLE BAR, W. C., where all communications for the Editor are requested to be addressed.

Orders for Advertisements, and Letters on business matters, to be addressed to the Publisher as above.

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THE JURIST.

LONDON, FEBRUARY 20, 1864.

THE Juridical Society, at its meeting last Monday, with a report of which we have been favoured, entered upon the important question of the aberration of intellect as an excuse for crime. A paper was read on that occasion by Mr. J. W. Hume Williams, who, though now at the bar, was formerly connected with the medical profession, intitled "The legal notion of unsound mind constituting irresponsibility for crime, as exemplified in the case of George Victor Townley." Dr. Forbes Winslow, who appeared as witness on the part of Townley at the trial, and whose peculiar views on this subject are so well known, presided, and addressed the meeting at considerable length. A debate ensued, in which Mr. Neate, M.P., Mr. Worsley, Mr. C. Hopwood, and Mr. Ratcliffe (another medical gentleman), took part, and it stands adjourned until Monday, the 29th instant.

Although Townley's name appears in the title of the paper, his case becomes of little importance compared with the great principle discussed on Monday evening—namely, whether the existing law on the subject of irresponsibility for crime is in a sound, or at least, in a perfect state. The foundation of it rests mainly on the answers given by the judges to the House of Lords to certain questions put to them, arising out of the case of *Daniel M'Naghten* (10 Cl. & Fin. 200, 210). In that case, Tindal, C.J., in the name of all the judges, except Maule, J., who delivered his own opinion, says, "To establish a defence on the ground of insanity, it must be clearly proved, that at the time of the committing of the act the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. . . . If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable." Dr. Winslow, Mr. J. W. Hume Williams, and those who think with them, contend that this should be altered; that *delusion* is not the true test of insanity; and the former laid down, in a written document, which he delivered to the meeting, that instead of the question usually put to juries in such cases, the following should be substituted:—

"Was the prisoner insane when he committed the crime, such insanity being the effect of a disorder of the brain, and was he, in consequence of this mental and physical condition, incapable at the time of exercising a healthy control over his thoughts and actions."

In support of his views, Dr. Winslow urged that there is a conflict between legal and medical views on the subject of insanity; arising from this, that the persons who propound their views to juries know nothing personally of *practical* investigations of insanity.

There can, he said, be no insanity without some disorder of the *brain*, either directly or sympathetically. In many cases of unmistakable insanity, on a superficial examination of the brain, no appreciable change of structure can be detected. But where the mind is clearly diseased, there must be some alteration of the tissue of the brain or its membranes, whether it can be detected by the senses or by the microscope. There is a thing called "brain matter," which partly consists of phosphorus. In idiots the quantity of this latter is very small. It is, he contended, the want of power over the *WILL* which constitutes the essence of derangement.

We take leave to observe, that if this is not a legal question, neither is it a medical one; it is a *meta-physical* question, involving considerations of the gravest character. Dr. Winslow, however, made two statements, which appear to us rather at variance with his theory. First, that lunatics have been found, who, after shewing that they knew perfectly the nature of murder, and the penalty affixed to it by law, added—"I should not be hanged for murder, because I am a lunatic"—an answer which speaks for itself; and, secondly, in reply to a question put by Mr. Worsley, that the minds even of undoubted lunatics are capable of being acted on by the dread of punishment.

In the course of his paper Mr. J. W. Hume Williams referred to the laws of other countries on this subject, as being more liberal to the accused than our own. The Scotch law, "If, though somewhat deranged, he" (the accused) "is yet able to distinguish right from wrong, *in his own case*, and to know that he was doing wrong in the act which he committed, he is liable to the full punishment of his criminal acts." (Alison's Prin. Cr. Law of Scotland, 645, 654). This is, substantially, our own law. The Code Napoléon (Code Pénal, § 64); "There is neither felony nor misdemeanour" (we see no better way of translating 'crime' and *délit*) "when the accused was in a state of alienation of mind" (so Mr. J. W. Hume Williams translated *démence*) "at the time of the act;" ("Il n'y a ni crime ni délit, lorsque le prévenu était en état de *démence* au temps de l'action")—a definition that gives no information whatever, unless we are to understand "*démence*" as including every case where there is the slightest aberration of intellect. Mr. Ratcliffe stated, that according to the practice of the French tribunals, whenever insanity in an accused person is suspected, a commission of medical men is appointed to examine him, who make a joint report, which is afterwards produced at the trial, when they are subject to examination and cross-examination on the subject. In order to estimate truly the value of this plan, we should know by whom the medical commissioners are chosen, whether there is a right of challenging them, and some other particulars.

The Juridical Society has done good service, by instituting a formal discussion on this important question, where Dr. Winslow and his friends may fairly encounter those (and such are the vast majority of the bench and bar) who differ from them. For our own part, while we deem the views of those gentle-

men respecting moral insanity, irresistible impulse to crime, &c., absurd in themselves, and if carried out, dangerous to the peace and security of the community, still it is very possible that the law is imperfectly expressed, and too tight in the opposite direction. We cannot admit that insanity and the presence of delusion are convertible terms; at least, if "delusion" is understood in its ordinary sense; seeing that most men labour under delusions of some kind, often of many kinds. On the other hand, delusion, though the usual concomitant of insanity, may not be indispensable to its existence.

Nor should the decision of judges, however learned, or the opinion of medical men, however eminent, deter us from looking this question straight in the face. Some author, whose name we have forgotten, says, "In reading what our old lawyers have written on the subject of insanity, we should remember that their notions of it were formed on observation of those wretched inmates of the madhouse, whom stripes and chains, cold and filth, had degraded to the stupidity of an idiot, or exasperated to the fury of a demon." All this has been happily removed, and the kind treatment of the insane of our days is one of the real blessings of an improved medical science. Still, while the errors of our forefathers shew us the danger of dogmatising on this subject, and while we treat the insane with all due consideration for their unhappy condition, we must not, in obedience to blind theories in the opposite direction, or even, under the imposing name of humanity, deliver society over helpless to the violence of real or pretended lunatics.

LAW REPORTING.

WE have received from Mr. Darby a copy of a letter addressed by him to Mr. Hopwood, the secretary of the Committee appointed to consider the subject of Law Reporting, and insert it for the consideration of our readers:—

6, Old-square, Lincoln's-inn,
Feb. 12, 1864.

Sir,—In reply to the invitation of the Committee on Law Reporting to make any observations or suggestions with reference to that subject, I have the honour to request that you will be good enough to lay before them the following observations:—

It seems to me, that, in considering the merits of the existing system, or of any proposed system, of reporting, the following principles should always be borne in mind:—

First, that reporting ought not to be a department of the State, because to allow persons nominees of, and responsible to, the Crown or Parliament, to be the sole and authoritative recorders of the law as laid down by the judges, who are themselves responsible for such law to neither, would infringe on the independence and functions of the judges, as well as on the independence and privileges of the Bar.

Secondly, reporting ought not to be the duty of the judges, or under their absolute control, because it would entail upon them labour which they could not have time properly to perform, and it would necessarily tend, as pointed out by Mr. Denman at the

meeting in Lincoln's-inn Hall, to make them less accurate in delivering their judgments.

Thirdly, that no authorised body of men ought to be intrusted with the duty of making reports, to be the only reports allowed to be cited; because (whether it be right or wrong that one set of reports should be preferred to another, if a case is reported in more than one report) every case the moment it is decided is a precedent, and at once becomes *public property* as such, and every suitor has a right to have it quoted in his favour, and it is both the duty and the right of counsel to cite it in the interests of his client. And this would practically become impossible as to any case not reported by such authorised body.

Fourthly, that no commission, or any body of men, whether judges, barristers, or both, ought to be appointed to make an authoritative revision and expurgation of the reports; because that would amount to decisions of the Courts being reversed or confirmed, without a Court, without counsel, and without suitors.

The reasons upon which the foregoing principles are founded appear to me so cogent, that, if altering the present system would involve any of them being contravened, it would seem better that such system, whatever its faults may be, should remain as it is.

I would further suggest, that mistakes in the reports of judgments must necessarily be unavoidable, and absolute accuracy in them impossible, owing to the judges delivering so many, and frequently very important ones, unwritten (a state of things which must always exist, for if the judges delivered all their judgments written, they could not get through the judicial business of the public); and I would ask the Committee to consider whether experience has not proved that the existence of several independent reports is an efficient practical remedy for this evil, and whether, therefore, on this ground, there would not be a grave objection to any system which would entail the exclusive use of any one set of reports.

And I would, in conclusion, draw the attention of the Committee to this—that what appears to be the gravamen of the charge against the present system of reporting, namely, that the number of cases reported is so great, and increasing yearly at an enormous ratio, seems to arise, not so much from any fault in the system itself, as from causes which it is impossible to control, namely, the increase of population and wealth, the increase of capital embarked in commercial speculation, modern discoveries, and the highly artificial state of society and of the relations between man and man. For the effect of all this is, not only so to increase the number of cases brought under the cognisance of the Courts as to have rendered necessary additional courts, but even to be continually bringing into existence new subject-matter of, and new points for, litigation. This evil, therefore, though capable of mitigation by means of digests, indexes, and text-books, as affording facilities for reference, seems to be one which no one can hope to remedy.

I have the honour to be, Sir,

Your obedient servant,

J. GEORGE N. DARBY.

To James T. Hopwood, Esq., Hon. Sec.

Mr. Serjeant Parry has received a patent of precedence. Mr. H. Tindal Atkinson, of the Northern Circuit, Mr. Alexander Pulling, of the South Wales Circuit, and Mr. J. Simon, of the Northern Circuit, have been admitted to the degree of the Coif. Mr. W. Field, of the Midland Circuit, Mr. D. D. Keane, of the Norfolk Circuit, and Mr. J. J. Johnson, of the Parliamentary Bar, and Home Circuit, have been appointed Queen's Counsel.

BELLIGERENTS AND NEUTRALS.

THE following is the substance of the paper read at the meeting of the Juridical Society, on the 1st inst., by Mr. C. Clark, on "the Principles that ought mutually to govern the Conduct of Neutrals and Belligerents:"—

Mr. Clark, at the outset, sought to shew that modern practices between neutrals and belligerents are, to a great extent, at variance with the principles deducible from their mutual relations, and that, moreover, those practices are inconsistent with each other. Rendering willing homage to the ability and courage that have presided in prize courts, he entertained no doubt, however, that fear for the safety of their country, and kindred feelings, had from time to time, perhaps unconsciously, affected the decisions of the judges, or at least influenced their accompanying remarks, which had been treated as the rules of jurisprudence. Hence the first principle which, above all others, ought to be brought to bear upon the subject was that of good faith; and he could not say that the present war in America had so far materially tended towards ascertaining the rights as between neutrals and belligerents. In his view, according to correct principles, the placing not of a seaport, but of a whole coast, under blockade, was unlawful; so also was the searching of all vessels on the high seas; and, lastly, the capturing of vessels when not carrying contraband of war was unlawful. These assumed rights he controverted with much minuteness, affirming that the first had been assumed as belonging of right to a belligerent only as a State necessity; that the second had been suggested by the convenience of belligerents; and the third was of no authority whatever. Fortifying this last position by the judgments of Sir William Scott, and arguing that there might be a change of intention on the part of the master of a neutral trader, while in transit, as to his destination, he urged that the rule assumed a wrong which was not done—a thing not assumed by any other law, and should not be permitted in maritime law alone. To try the principle, he supposed a case—namely, that but one country could produce the medicine known as bark. If that country were to be at war, was all the rest of the world to be liable to fever without relief in the meantime? Belligerents breaking the peace, for their own reasons, could not suppose that other nations would submit to anything beyond the inevitable necessities arising out of the conflict. Shewing that modern belligerent practices were innovations upon principles at one time accepted, he instanced a treaty concluded in 1674 between Great Britain and the United Provinces, providing for entire freedom of trade in time of war, except in the case of contraband goods; and quoted a decision founded thereon by the House of Lords in 1783; and, further, he instanced a similar treaty made by this country with France; and these instances he took to indicate that the principle of freedom of trade in time of war, excepting only contraband, was accepted and approved. It had never been allowed, he went on to urge, that a belligerent was entitled to injure the trading of a neutral nation. The assumption had been obliquely insinuated, but it had never been openly avowed. But the practice now set up was to destroy the commerce of a neutral as well as that of the enemy. Such was done at the present time by the existing blockade in America. The trade of Europe and of the Southern States had been taken as identical. But no such right existed. Excepting in articles contraband of war, Europe had a right to have its trade as before. It might be said,

that such had not been the practice, but that was because principles had been abandoned, and improper practices allowed to be adopted. Treaties, therefore, which had been founded on practices, instead of taking principles as the correctives of practices, had not taken the test by which they should have been guided. One practice introduced he regarded as essentially piratical—the practice recently put into operation by a person claiming a commission from his Government to seize and burn unarmed vessels. The first act of the kind occasioned a thrill of astonishment, if not of horror, in the public mind. It was said, that necessity justified it. But never was a more superficial view taken of any important matter. The supposed necessity arose from the fact, that as the Government which commissioned the capture had no ports of its own to which the captured vessel might be taken, and no courts in which legal proceedings could be instituted, the capture must be made after the manner pursued. This was the reason taken by Paul Jones, who, however, carried it a little further, and, because he had no prison for his captives, made them walk the plank. The fancied reason was utterly worthless. No nation, more than any man, had a right to put itself into any condition, without taking all the consequences that legitimately follow. If a nation had no ports nor courts where prizes might be adjudged, it must abandon the ships which it takes as prizes, because in all countries an adjudication is necessary before the right of the captor can be established. The conclusions at which he had arrived he finally stated to be, that the blockade of a whole coast is unjustifiable; that the blockade ought to be confined to a besieged port or other place; that at all other times neutrals have a right to carry on trade with the enemy in all matters not concerned in war; that no stoppage should be allowed on the high seas, except within the defined limits of the blockade; and that then, as a balance on the side of the belligerent, all trade in articles of war ought to be prohibited by neutrals to their subjects. To these he would add, the adoption of the principles suggested by Mr. Jefferson Davis, that instead of nations adjudicating their prizes in their own courts, they should be allowed to carry them for adjudication into the courts of neutrals.

REVIEW.

The Practice of the Court of Chancery; with Forms of Costs, and other Forms; Acts concerning Trustees, Charitable Trusts, Settled Estates, and Infants' Marriage Settlements, &c. The Third Edition. By HENRY JARMAN, a Solicitor of the Court.

[W. Maxwell; H. Sweet; Stevens, Sons, & Haynes. 1864.]

THE utility of Mr. Jarman's book on Chancery Practice is shewn by the Profession requiring a third edition.

It is not, indeed, a work likely to be so useful to members of the Bar as Mr. Morgan's work on the Chancery Acts and Orders; nor does the author profess to deal with pleading, as was so well done in the earlier editions of Daniel's Chancery Practice; nor is it so full in some respects as Mr. Sidney Smith's useful work on Chancery Practice; but it forms an excellent manual for solicitors and managing clerks, to guide them through the intricacies of a Chancery suit.

Since the last edition of the work was published, many changes have taken place in the practice of the Court of Chancery; and whether they have been effected by statutes, orders, or regulations, they have

been carefully incorporated in the present edition, together with the decisions of the Courts, which have been well classified and noticed under their proper heads.

The arrangement of the book is convenient to the practitioner, for, as the proceedings in a suit by a plaintiff and defendant respectively have been placed in the order in which it is probable that they may occur, and each course of practice has been kept distinct from the other, he is enabled almost at one view to see before him the several steps he may be called upon to adopt in the progress of a suit, in the order in which they may occur.

The value of the book is also much increased by a copious and well-constructed index.

Tudor's Leading Cases on Real Property, Conveyancing, and the Construction of Wills and Deeds, with Notes. Second Edition. [Butterworths. 1863.]

THIS well-known work needs no commendation. Justice to Mr. Tudor, however, requires us to say, that familiarity with its pages from its first appearance have convinced us of its value, not only as a repertory of cases, but a judicious summary of the law upon the subjects it treats of. "In this edition," the author tells us, "the notes have been carefully revised, and much new matter has been added, whenever the subject appeared to the author to require further explanation or expansion;" and we accordingly observe, that he has carefully elaborated various portions of the book, which we had thought admitted of more detailed treatment, and of fuller statements of the bearing of the cases referred to. A new leading case (*Lord Braybroke v. Inskip*), with notes on the subject of devises of mortgage and trust estates, has, it appears, been added to this edition. The author's statement, that "the number of cases cited has been largely increased," is fully borne out by a comparison of the two editions, and, we may add, "usefully increased." So far as we can see, the author has brought down the cases to the latest period; and altogether there have been added about 170 pages of notes in the present edition. As a guide to the present law, the book will now be of great value to the lawyer; and it will be especially useful to him, when away from a large library, as a convenient and reliable substitute.

NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE, WITH WHICH IS UNITED THE SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.—A meeting of this Society took place at its rooms, 3, Waterloo-place, Pall-mall, on Monday, the 8th February, Sir Fitzroy Kelly, Q. C., M. P., in the chair, when a discussion was held on Mr. Palmer's paper, "Suggestions for the Amendment of the Law of Appeal in Criminal Cases." Mr. Burch Rosher, Mr. Stuart, Mr. Wilson, Mr. Edgar, Mr. Hastings, Sir E. Eardley Wilmot, Mr. Edward Webster, and the Chairman took part in the discussion.

COMMISSIONER TO ADMINISTER OATHS IN CHANCERY.—The Lord Chancellor has appointed Thomas Laxton, Gent., of Stamford, Lincolnshire, to be a Commissioner to administer oaths in the High Court of Chancery in England.

The Right Hon. Sir William Erle, Knt., Lord Chief Justice of her Majesty's Court of Common Pleas at Westminster, has appointed the following gentlemen to be Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women:—Charles Wilkinson, of Kendal, in and for the county of Westmoreland; and James Hare Jolliffe, of Crewkerne, Somersetshire, in and for the county of Somerset.

Imperial Parliament.

HOUSE OF LORDS.—Friday, Feb. 12.

Earl Grenville moved the appointment of a committee of the Lords to act together with the committee of the House of Commons on Metropolitan Railways.

Agreed to.

HOUSE OF COMMONS.—Friday, Feb. 12.

Mr. M. Smith asked the First Commissioner of Works whether it was the intention of the Government to introduce in the present session any measure for building new courts of justice in the metropolis, or for improving the state of the existing courts.

Mr. Cowper said it was the intention of Government to introduce a bill for the concentration of the courts of law and equity on a site to be purchased between Carey-street and the Strand, in accordance with the recommendation of the royal commission which had reported on the subject.

Monday, Feb. 15.

Mr. Black asked the Secretary of State for the Home Department whether the Government intended to bring in a bill this session for consolidating the acts relating to copyright in works of literature and art.

Mr. M. Gibson said the Government had no present intention of bringing in a bill to consolidate those acts. Circumstances had not arisen to render such a measure of urgent necessity.

Mr. Black was understood to give notice that he would himself bring in a bill.

Sir G. Grey (the Home Secretary) moved the second reading of the Insane Prisoners' Act Amendment Bill.

Mr. Hardy thought it essential that the verdict should be conclusive as to the state of mind of the prisoner up to the time it was given, and that all subsequent inquiry should relate solely to his state of mind after the verdict. He would, therefore, suggest to the right hon. baronet, without meaning to oppose the second reading, to leave the bill as it stood with regard to cases of imprisonment or penal servitude, but in the case of capital punishment the bill should be altered to this effect. The words of the bill were, "If any prisoner should appear to be insane." It did not appear from the bill to whom or in what way the prisoner was to appear insane. His suggestion was, "If it shall appear to the visiting justices that a prisoner is insane, they should represent it to the Secretary of State." And it seemed to him that the Secretary of State ought then to issue some commission, whose proceedings, if not public, should at all events be published, and that their judgment should be binding upon the Secretary of State, in the statutory capacity they were giving him, without interfering with the prerogative of her Majesty. With reference to the strange contrariety of medical opinions at the various investigations, the hon. and learned member urged the necessity of introducing into the commission which would be created, if his suggestion were adopted, a portion of the lay element—but, of course, medical men could be called in and consulted.

Mr. Macdonogh said, in his opinion the Secretary of State was wrong in devising a remedy to an enacting statute. It was clear to him that a declaratory statute of ten lines would be much more effective. The bill was framed upon a mistaken view of the construction of the words "it shall be lawful," in the act of the 3 & 4 Vict. The right hon. baronet seemed to regard them as absolutely imperative, obligatory, and mandatory; whereas the words were clearly permissive, and all that was wanted was a declaration to that effect:—"Whereas doubts have arisen, and still exist, as to whether the words 'it shall be lawful' are mandatory or permissive, be it enacted that those words shall be held to be discretionary;" leaving it to the Secretary of State to satisfy himself by reasonable inquiry that the prisoner was insane.

Sir C. O'Loughlin was prepared to adopt the bill, but at the same time he should have preferred that it made it obligatory upon the Secretary of State, instead of leaving it discretionary with him, to order a public investigation into the alleged lunacy. He regretted, however, that the bill was not extended to Ireland and Scotland.

Mr. Scourfield was most anxious, that in the determination

of these questions the legal element should not be made subordinate to the medical element; the reasoning of the lawyer was directed to the good of society at large, while the physician bustled himself simply about the condition of the patient, and his chances of recovery.

Mr. D. Seymour pointed out that the bill contained no provision meeting the case of a prisoner under sentence of death who was declared insane, but who subsequently recovered. Provision was made for the case of a man sentenced to a term of imprisonment, or to transportation, but none for such a case as Townley's.

Mr. Hunt hoped that a distinction would be made between prisoners sentenced for minor offences and those under sentence of death or transportation. He also concurred in the opinion, that once the issue of insanity had been fairly raised before a jury and determined, the verdict ought not to be overridden by the certificate of visiting justices. If it should be questioned, it ought to be before a tribunal equally solemn and responsible.

Lord Enfield, omitting altogether the legal aspect of the question, thought that some power of safeguard should be given to the visiting justices, who would then be glad to take upon themselves the responsibility, which, if they had not that safeguard, many would shirk.

Mr. M. Smith said, he had looked at that bill, and had come to the same conclusion as the member for Leominster had done, and thought that the Home Secretary would be left in the same position as before, except that the act had given him a power of discretion which before was doubtful, as to whether he had or had not to act upon the opinion of justices. But would it, he asked, be satisfactory to a jury whose verdict had been given upon the very point in question, if that verdict were reversed three days after by a certificate given by three justices and two medical men? Therefore he thought that something more solemn, something more open, something the public could understand, should be done, before this sentence was reversed. His suggestion would be to take the old constitutional tribunal of a jury. They were the best tribunal to decide on conflicting evidence, and to determine whether the medical evidence or that of the other evidence was right. He believed they would decide rightly, and he was quite sure of this, that no other tribunal would give such satisfaction to the country.

Mr. Evans said, he agreed with the visiting justices of Derby, that an entirely different system should be pursued in trying the insanity of prisoners, and thought it would be very desirable, indeed, that some tribunal, concerning the competency of which there could be no doubt whatever, and the proceedings of which should be entirely public, should be constituted for the purpose of determining that question.

Sir G. Bowyer said, his idea was, that the medical men did not act as judges in cases of this description, but might be called before any legal tribunal as experts, and give their opinion on the subject in answer to questions. The medical idea of insanity had for its object the existence of mental disease, and was perfectly different from the legal idea of insanity, which was grounded on the responsibility of a person, or his capacity to do certain acts; and the effect of this diversity was, that, in their ideas of insanity, medical and legal men would be to a considerable extent at cross purposes. The best suggestion that had been made was, that the question of the sanity of the prisoner after conviction should be tried by a jury. But whether tried by a jury or by commissioners, whether the question was the sanity of the prisoner before or after conviction—he was of opinion that medical men should only appear as “experts” before that commission or jury, and not as judges of the question, whether the prisoner was to be executed or not. It might be worth while for the Crown to name certain eminent physicians, who should give their opinions in all cases of that nature, being adequately remunerated; for without some such arrangement the public would never be satisfied with the decision come to on such momentous questions.

Mr. F. Goldmid was of opinion that the proposed inquiry into the state of mind of a prisoner should be confined to cases of insanity alleged to have supervened after the conviction; and that it should be taken for granted, if insanity had occurred between the commission of the crime and the trial, the jury had rightly decided the question. This would prevent the collision that would otherwise arise between such a

tribunal and the judge and jury—a state of things which was much to be deprecated.

Sir W. Jolliffe said, he would urge on the right hon. baronet to give that circumstance his consideration, and endeavour to frame his bill on some system by which it might be made applicable where insanity had supervened on a capital conviction.

Sir F. Kelly was strongly of opinion, that the jurisdiction of magistrates and physicians should have been limited to ordinary offences, and that capital crimes should have been excluded from the operation of the act. He was preparing a bill, which he hoped would be before the House before this bill went into committee, which, instead of leaving the power in the hands of a Secretary of State, of dealing with cases of this kind, would provide for their being investigated by a constitutional tribunal, such as a judge and jury. If the time arrived when they could entirely abolish capital punishment, and impose upon the worst of criminals the next severest punishment which the law could inflict, with a certainty of its being an effective condemnation for life, these unseemly questions would cease to arise.

Mr. M'Mahon said, that all such cases as this they were discussing were provided for by the New York Code, which required cases of lunacy, occurring after conviction, to be tried by a judge and jury.

Mr. Alderman Rose remarked, that during this celebrated case there had been another case of murder, which had attracted considerable attention. The proceedings connected with the trial and execution of Wright had given some rise to the impression, that there was one law for the rich, and another for the poor. There could be little doubt, that if Wright had money, and was instructed to plead not guilty, he might have escaped the capital sentence.

Sir George Grey replied, and the bill was read a second time.

Mr. Paull obtained leave to bring in a bill to facilitate the discharge of insolvent debtors in certain cases.

Mr. C. Forster obtained leave to bring in a bill to abolish the forfeiture of lands and goods on conviction of felony.

Tuesday, Feb. 16.

Mr. M. Gibson obtained leave to bring in a bill to facilitate, in certain cases, the obtaining of further powers by railway companies.

Mr. Dodson moved the nomination of the select committee on the registration of county voters; which was agreed to.

Mr. Hunt moved, that it be an instruction to such committee, that they have power to inquire into the sufficiency of the powers vested in revising barristers for enforcing order in their courts, and to report on the same.

Agreed to.

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NOTICE.

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THE JURIST.

LONDON, FEBRUARY 27, 1864.

IMPORTANT questions often arise upon the severance of an heritage by the owner into two or more parts, as to whether a grant or reservation of easements can be implied.

It has, however, been long since settled, that upon a severance, all those easements without which the enjoyment of the severed portion could not be had will be implied. Thus, if A. sells a field which is entirely surrounded by land of his own, although the deed by which he conveys the field contains no express grant of a right of way through the land which he retains, a grant will be implied as being necessary to the enjoyment of the field. Such way is termed a way of necessity. And if A. afterwards sold the land surrounding the field, without noticing the right of way, the grantee nevertheless takes subject to it, for not only cannot the grantor derogate from his implied grant of a right of way, but the grantee of the surrounding fields takes subject to it.

In like manner, if A. had retained the field, selling the whole of the surrounding land, but not expressly reserving any right of way through them, the law nevertheless would imply a reservation of right of way as necessary to the enjoyment of the field.

Where, moreover, a natural watercourse runs through a heritage which is afterwards severed by the sale of part, the grantee, although there may have been no reservation on the part of the grantor, has no right to obstruct the flow of water. This was clearly decided in *Sury v. Pigot* (Poph. 166), which case, however, proceeds upon the principle, that no riparian proprietor has a right to interfere with the natural flow of water to the injury of other riparian proprietors, and does not depend upon the notion of the watercourse being an easement.

In what cases there will be an implied grant or reservation of easements on a severance of a heritage when they are not easements of necessity, is at present by no means clear. Until lately, at all events, it was generally understood, that where the owner of two tenements sold one of them, there would be an implied grant of those *continuous and apparent easements*, which, during the unity of possession, were enjoyed under the title of ownership. Where, for instance, a person possesses a house, having the actual use and enjoyment of certain lights, and also possesses the adjoining land, and sells the house to another person, although the lights be new, he cannot, nor can any person who claims under him, build upon the adjoining land so as to obstruct or interrupt the enjoyment of those lights.

And it seems that the result would be the same if the owner had sold the land and retained the house, as in such case there would be an implied reservation to himself of the continuous and apparent easement of lights which the purchaser of the land would not be able to obstruct. (*Riviere v. Bower*, 1 Ry. & M. 24; and see *Swansborough v. Coventry*, 9 Bing. 305).

We have before seen that unity of possession, in no

manner affects the right of subsequent riparian proprietors in the case of a natural watercourse, is the law different when the watercourse is artificial, as in the case of a pipe or drain?

In *Sury v. Pigot*, it seems to be assumed, by Whitlocke, C. J., that a gutter or pipe would not be extinguished by unity of possession, if left untouched by the proprietor during such unity of possession. (*The Lady Brown's case*, Palm. 446).

This was most distinctly laid down in the Court of Exchequer in the case of *Pyer v. Carter* (1 H. & Norm. 916). There, the plaintiff's and defendant's houses adjoined each other. They had formerly been one house, and were converted into two by the owner of the whole property. Subsequently the defendant's house was conveyed to him, and afterwards the plaintiff took a conveyance of his house. At the times of these conveyances, a drain ran under the plaintiff's house, and thence under the defendant's, and discharged itself into the common sewer. Water from the eaves of the defendant's house fell on the plaintiff's house, and then ran into a drain on the plaintiff's premises, and thence through the drain into the common sewer. The plaintiff's house was drained through this sewer. It was held by the Court of Exchequer, that the plaintiff was, by implied grant (or, more correctly speaking, by implied reservation), entitled to have the use of the drain, because it was used at the time of the defendant's purchase of his house. And Watson, B., observed, "We think it was the defendant's own fault, that he did not ascertain what easements the owner of the adjoining house exercised at the time of the purchase." The case of *Pyer v. Carter* appears to have been cited with approbation by the House of Lords in *Ewart v. Cochrane* (7 Jur., N. S., part 1, p. 925); and in *Polden v. Bastard* (11 Weekly Rep., Q. B., 778), by the Court of Queen's Bench.

It is true, that where the easement is not continuous or apparent, as in the case of the right to use a pump (*Polden v. Bastard*, 11 Weekly Rep., Q. B., 778), or a right of way (*Pheysey v. Vicary*, 16 M. & W. 484), a grant or reservation of it will not be implied upon the severance of the unity of possession. (See also *Worthington v. Gimson*, 6 Jur., N. S., part 1, p. 1053; and *Daniel v. Anderson*, 8 Jur., N. S., part 1, p. 328).

In the recent case of *Suffield v. Brown* (10 Jur., N. S., part 1, p. 111), the subject of implied grants and reservations of easements was most elaborately discussed by the Lord Chancellor; and although it was not actually necessary to the decision of the case before him, he, in the clearest manner, dissented from the principles laid down by the Court of Exchequer in the case of *Pyer v. Carter*, and reversed the decision of Sir J. Romilly, M. R., who followed that case, as being the decision of a Court of co-ordinate jurisdiction. In *Suffield v. Brown* it appeared, that from the year 1841 till the year 1845, the same person was the owner and occupier both of a dock and of a strip of land and wharf adjoining the dock; and during that period, whenever a vessel of considerable size was taken into the dock to be repaired, her standing bowsprit projected over and across the adjoining strip

of land. In 1845, the strip of land and wharf were sold to a person through whom the defendants claimed, without any easement being reserved by the grantor. In 1846 the dock was sold to the plaintiff; the bowsprits of the vessels in the dock had, from the year 1845, continued to project over the wharf. Upon a bill being filed by the owner of the dock, to restrain the defendants from building upon the wharf in such a way as to prevent the bowsprits overhanging the wharf, Sir J. Romilly, M. R., granted the injunction (9 Jur., N. S., part 1, p. 999), which was afterwards dissolved by the Lord Chancellor.

Now, we cannot but think that his Honor's decision was erroneous, because the right of having the bowsprits to project over the wharf was not a continuous or apparent easement, nor was it an easement of necessity, because the dock might have been enjoyed, though perhaps not so conveniently or so extensively, without its existence; and therefore the decision of his Honor might well have been reversed, in accordance with all the authorities, which clearly and indisputably lay down the principle, that there will be no implied grant or reservation of easements, except easements of necessity, unless they are continuous and apparent. The Lord Chancellor, however, did not confine himself to reversing the decision of the Master of the Rolls on these grounds, but on the ground that the case of *Pyer v. Carter*, upon which the Master of the Rolls (though it appears to us not to be a case in point) principally relied, was erroneously decided.

With reference to *Pyer v. Carter*, the Lord Chancellor notices what he terms the "fallacy" in the judgment of the Court of Exchequer. "The expression of the Court," said his Lordship, "that the purchaser of the first house took it 'such as it is,' is erroneous, and shews a mistaken view of the matter; for in a question, as that was, between the purchaser and the subsequent grantee of his vendor, the purchaser takes the house, not 'such as it is,' but such as it is described and sold, and conveyed to him in and by his deed of conveyance; and the terms of conveyance in *Pyer v. Carter* were quite inconsistent with the notion of any right or interest remaining in the vendor. It was said by the Court that the easement was 'apparent,' because the purchaser might have found it out by inquiry; but the previous question is, whether he was under any obligation to make inquiry, or would be effected by the result of it? which, having regard to his contract and conveyance, he certainly was not. Under the circumstances of the case of *Pyer v. Carter*, the true conclusion was, that, as between the purchaser and the vendor, the former had a right to stop and block up the drain where it entered his premises; and that he had the same right against the vendor's grantee. I cannot look upon the case as rightly decided, and must wholly refuse to accept it as any authority."

The observations which the Lord Chancellor makes with regard to the danger which would result, if the doctrines laid down by the Master of the Rolls were carried out, viz. that a purchaser is in all cases bound to take notice of the mode in which the adjoining property is used by the vendor, are no doubt, so far as

they are applicable to easements which are neither of necessity nor continuous and apparent, sound and conclusive. And the case which he puts of a manufacturer, who has been in the habit of throwing the refuse of his manufactory upon a strip of land which he afterwards sells, is a good illustration of the evil which would result, if the vendor or his representatives would be able, under an implied reservation, to claim the easement of continuing to throw out the refuse upon the strip of ground sold for the purpose of its being converted into a garden. That illustration, however, although very apt, as applied to the case of *Suffield v. Brown*, has no application to *Pyer v. Carter*, where the easement claimed was (in this respect differing from *Suffield v. Brown*) continuous and apparent.

Whether the evils which the Lord Chancellor seems to think would result from following *Pyer v. Carter*, would be as great as those which its reversal would occasion, admits, perhaps, of doubt.

Suppose a builder sells, one after another, a range of houses, built upon a uniform plan, having a drain running under the whole of the houses, by which the whole block is drained, or having a pipe into which the rain-water on the roof runs, in the absence of any express contract or reservation, is not the doctrine that each purchaser should take his house "as it is," at least, as convenient as that which would give him power to block up the drain, or cut the pipe? The doctrine laid down by the Lord Chancellor appears, however, to be in accordance with the Roman law. (Dig. lib. 8, tit. 2, l. 30). "Si quis ædes, quæ suis ædibus servirent, cum emisset, traditas sibi accepit, confusa sublataque servitus est: et, si rursus vendere vult, nominatim imponenda servitus est; aliquin libere veniunt." Nevertheless, the authorities of the English law, in the case of continuous and apparent easements, until the recent decision of the Lord Chancellor, differ from the Roman law, as laid down in the sentence above quoted from the Digest; nor do we think it by any means clear, that the law, as laid down in *Pyer v. Carter*, will necessarily, if brought in question before the highest tribunal, meet with universal disapprobation.

THE Merchandise Marks Act, 1862 (25 & 26 Vict. c. 88), many of the provisions of which did not come into operation until the 1st January, 1864, seems a statute likely to create a considerable amount of litigation, especially as it has been passed in times in which the frauds of trade are a constant subject of complaint, and contains numerous provisions intended to prevent these frauds. The act is remarkable for its verbiage; it may have been necessary to use such a multiplicity of words in order to reach the frauds of traders, but it certainly requires an unusual amount of patient attention, in order to grapple with, and comprehend the meaning of, the protracted sentences which are to be found in many of the sections. The definition of the term "trademark" in sect. 1, is almost enough to deter one from further consideration of the statute. "The word 'mark' shall include any name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark of any description; and the expression, 'trademark,' shall

include any and every such name, signature, &c. lawfully used by any person to denote any chattel, or (in Scotland) any article of trade, manufacture, or merchandise, to be an article or thing of the manufacture, workmanship, production, or merchandise of such person, or to be an article or thing of any peculiar or particular description made or sold by such person; and shall also include any name, signature, word, letter, number, figure, mark, or sign which, in pursuance of any statute or statutes for the time being in force relating to registered designs, is to be put or placed upon, or attached to, any chattel or article during the existence or continuance of any copyright, or other sole right acquired under the provisions of such statutes, or any of them."

This is a tolerably long definition of the meaning of the word "trademark," and having thoroughly mastered it, the reader may perhaps be better able to conquer the succeeding sections. At present we will only speak of the 19th and 20th sections. The 19th section runs thus—"In every case in which, at any time after the 31st December, 1863, any person shall sell, or contract to sell (whether by writing or not), to any other person any chattel or article with any trademark thereon, or on any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or other thing, together with which such chattel or article shall be sold, or contracted to be sold, the sale, or contract to sell, shall in every such case be deemed to have been made with a warranty or contract by the vendor to or with the vendee, that every trademark upon such chattel or article, or upon any such cask, &c., was genuine and true, and not forged or counterfeited, and not wrongfully used, unless the contrary shall be expressed in some writing, signed by or on behalf of the vendor, and delivered to and accepted by the vendee."

Sec. 20 contains a similar enactment with respect to "any description, statement, or other indication of or respecting the number, quantity, measure, or weight of such chattel or article, or the place or country in which such chattel or article shall have been made, manufactured, or produced." It is singular that the word "quality" is here omitted.

Now, these two sections may give rise to a flood of litigation. They turn what was previously matter of representation into matter of contract, and however innocent a vendor may be of any fraudulent intention, they render him liable to legal proceedings if the wares which he sells bear any trademark or particular description which is not strictly applicable to them. It is clear that, to a certain class of individuals who are not averse to hunting up occasions for legal proceedings, these sections will be a great comfort and satisfaction. At the same time, if we are to believe all we read, in medical and other publications, as to the tricks of many traders, who supply the public with articles of food or other necessities or luxuries, it is too true that these stringent provisions are required.

There are other sections in the statute which give a power of proceeding summarily before justices to recover penalties for the fraudulent use of trademarks, and which have already been put in force in several instances. Upon the whole, the statute is one which should be carefully studied by traders, and which may work very beneficially for the public. At the same time the necessity for such a measure is a sad confession of the want of straightforward dealing between man and man which exists in this country.

THE REPORTING SYSTEM.

WE are indebted to the writer for a copy of the following "Suggestions to the Reporting Committee:"—

"Gentlemen,—Having been favoured with a letter from your secretary, I should be wanting in respect towards those eminent persons who compose the committee for considering the reform of the present mode of reporting, if I were not to respond to your invitation—an invitation which, I think, for its frankness and modesty, reflects the greatest honour on the committee, and at the same time evinces the difficulty of the task you have undertaken. All who love the law must earnestly desire that what is not statutory should be as certain as possible, and as we have the highest authority for the assertion, that there is no such thing as an *authorised* report, that our reports should be fewer and indisputable. But it would be a grievous mistake, on the one hand, to make the presiding judge subservient to the reporter, or, on the other hand, the reporter to the presiding judge; each must be independent of the other, yet both must practically concur in a perfect report. Hitherto, in my opinion, the reporter has not held a sufficiently high position in the court, in view of the enormous influence of precedent. I think, therefore, that an office, approaching that of the judicial in form and dignity, should be assigned to those persons in each court who determine what shall be precedent. Consequently I am in favour of a public reporter for each court, to be appointed and paid by the Government, at a salary of not less than 1500*l.* per annum, who shall be provided with a suitable sitting in the court, and with whom shall be left all such copies of proceedings as are required to be deposited in court, and without whose presence or representation, nothing whatever should be heard. I should suggest, that the public reporter should be at liberty to employ such assistant reporters as he should think fit; that the form and style of his reports should be left to his discretion; that he should be bound to issue his reports monthly; that the expenses attendant upon the employment of existing reporters, and the preparing, printing, and publishing of his reports should be a charge upon the Inns of Court, who should be authorised to reimburse themselves by collection from their members of such an annual sum as should be sufficient for that purpose; that the annual accounts of the public reporter shall be audited by the Inns of Court; that each of the members of the said Inns should be entitled as such to one copy of each volume of reports, free of charge; that, within three months from the publication of any volume of the Court Reports, the presiding judge should signify to the public reporter anything which might appear to the said judge erroneous in the reports, and whether the public reporters admit, or do not admit the same, the passage should be amended or noted, as the case might be, in the next volume of reports; that all the reporters of all the courts should form together the council of reporters; that the council of reporters should assemble periodically, as they should think fit, to consider what, in their opinion, seemed conflicting cases, and should report the same annually to the House of Lords or Privy Council, according as either might be the supreme court of appeal in the subject-matter, in order that it might be judicially and finally determined which of the decisions in the said conflicting cases should prevail; that the same council of reporters should also annually report to Parliament what, in their opinion, would be desirable amendments of the existing law; that the court reports alone should be citable; that the owners of the existing reports should be compen-

sated; that the revision and digestion of the cases should be effected by the same statute, to be styled "An Act for Revising and Digesting Cases, and for providing authorised Reports of the Decisions at Law and in Equity."

It may be objected, however, that a public reporter, with a certain stipend, may become remiss or negligent in the performance of his duties; but equally so may a judge, and both ought to be removable for wilful neglect, or default, or plain incapacity. It is, at all events, more likely that a reporter who is not adequately remunerated will grow careless, than one who is stimulated to the zealous discharge of his duties by a sufficient stipend, and a sense of responsibility. The past history of reporting only shews, that the Scylla of monopoly has been avoided by the Charybdis of license; if, then, there shall now be an interregnum of something which is not in the nature of private enterprise, but public property, I am inclined to think, that both the Bar and the public will derive benefit from the change. Conceive, gentlemen, the office of registrar or chief clerk as one of private enterprise! Yet either office, so constructed, would be less liable to exception than that of reporter, for all parties interested are represented before the registrar or chief clerk; but how, at present, is the public represented in the drawing up of reports which profess to affect its interests? The office of the judge is not one of private enterprise, and the office of reporter ought to be assimilated to it; corruption, or influence, is not less hypothetical as operating upon the one than the other. There is an apprehensive indolence, which is extremely prejudicial to progress—"a lion is in the way" is a cry that represents an evil conservatism, that prevails for centuries. If it be feared that, in digesting the cases, we may omit something valuable in decision, how easy to redecide it! What if, by somewhat lessening the number of reported cases, judges should be given a little more discretion upon the law and facts, and not become, as they seem likely to become, mere expositors of precedents, in which one mistake often serves to justify another? That these changes which I have mentioned involve continuous and zealous exertions on the part of those who shall constitute the proposed system of reporting, is undeniable; but it is time that our reports should cease to be of so voluminous a character, and of so protean a form, otherwise, I foresee that our judges, in self defence, will begin to repudiate altogether any reference to so uncertain, so expansive, and albeit unauthorised a thing, as modern precedent, and, breaking free from those fetters which modern ingenuity has attempted to bind too closely, proceed to exercise somewhat more of that high faculty of reasoning, which the name of judge implies.

I am, Gentlemen,

Your obedient servant,

Rolls Chambers, Chancery-lane,
Feb. 11, 1864.

G. L.

The Right Hon. Sir William Erle, Knt., Lord Chief Justice of her Majesty's Court of Common Pleas at Westminster, has appointed the following gentlemen to be Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women:—William Holland, of Bedford-row, Middlesex, in and for the county of Middlesex, also in and for the city and liberties of Westminster, and the city of London; Horatio Compigne, of Gosport, Hants, in and for the county of Hants; and Lewis Crombie, of Wandsworth and Lambeth, Surrey, in and for the county of Surrey.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, Feb. 18.

Earl Romney asked the noble and learned lord on the woolsack, whether the Government intended to consider the state of the law regarding the removal of clerks of the peace from their office, with the view of proposing an amendment in the law. These officers had very important duties to perform, and it was very desirable that, in cases of embezzlement, and other such cases, there should be no doubt as to the power of the magistrates to dismiss them. At present, the law in this respect was in a very unsatisfactory state.

The Lord Chancellor said that he would take the subject into consideration, and confer with the Secretary of State for the Home Department, with a view of seeing whether a bill might not be brought in to effect an improvement in the law.

Lord Cranworth said, that if clerks of the peace were convicted of embezzlement or other offences, there could be no difficulty in saying, that then they should be removable as of course. It was suggested, and the point might be worth considering, that as the judges were removable by the Crown, upon an address voted by both Houses, so something in the nature of an address from the court of quarter sessions to the Lord Chancellor, should give him jurisdiction.

Tuesday, Feb. 23.

The Marquis of Salisbury moved, "That an humble address be presented to her Majesty for returns of the number of convicts under sentence of penal servitude, confined in gaols other than Government prisons in the years 1862 and 1863; and to ask the Government whether any, and what, steps have been taken to carry out the recommendations of the Commission on Penal Servitude."

Earl Granville was understood to assent to the motion, stating at the same time, that many of the recommendations of the commission on this subject had been embodied in a bill now before the other House, and the whole question could best be discussed when that bill was before their lordships.

After some observations from the Earl of Carnarvon, Lord Wodehouse, and Earl Grey, the returns were agreed to.

HOUSE OF COMMONS.—Thursday, Feb. 18.

Mr. R. Long inquired of the Home Secretary, whether he intended to introduce a bill for amending the Highway Act this session, and if so, how soon it would be laid upon the table of the House.

Sir G. Grey said, that several suggested amendments had been under his consideration, and he was still receiving memorials from quarter sessions and other public bodies upon the subject, and he could not introduce any measure until they had been fully considered. Any amendments which might be proposed would go, not to the principle, but merely to the details, of the act of last session.

Mr. Rogers desired to know whether, after a county had been divided into highway districts, under the act of 1862, facilities would be afforded to rural parishes, where the population, according to the last census, was more than 3000, and such parishes desired to withdraw from such districts, by adopting the Local Government Act of 1858.

Sir G. Grey said, that his own opinion was, that it was undesirable that rural parishes, when once they had been included in highway districts formed by order of the court of quarter sessions, should withdraw themselves, by the adoption of a local act. It was not intended to give them any facilities for doing so, beyond those which they now possessed by law.

Sir G. Grey (Home Secretary) moved for leave to bring in a bill, founded on the report of the commissioners, relative to the operation of the systems of penal servitude and transportation.

Mr. Adderley could not resist the conviction that the measure proposed to be introduced was founded upon a wrong principle. If no one more competent undertook the task, he would himself submit a bill to the House, based on the contrary principle to that embodied in the bill of the Government, and allow Parliament to decide between the two.

Lord Naas, Mr. Whitbread, Mr. Cave, Mr. C. Fortescue, Sir J. Packington, Mr. Childers, Mr. Newdigate, Mr.

Marsh, Mr. Walpole, and Sir George Grey, in reply, having addressed the House,

Leave was given to bring in the bill.

Leave was given to *Mr. W. Ewart* to bring in a bill to render permissive the use of the metric system of weights and measures in this country. The bill was read a first time.

Friday, Feb. 19.

Mr. W. Ewart gave notice that, on the first opportunity after Easter, he would make a motion for the repeal of the punishment of death.

Mr. Morritt asked the right hon. baronet the Secretary of State for the Home Department, whether it was finally decided that the assizes should be moved from York to any other place.

Sir G. Grey said, that there was no intention of removing the assizes from York. Whatever was done, it was contemplated that the assizes should be held at York for the greater part of the county. What had taken place was, that memorials from various towns in Yorkshire had been presented to her Majesty, praying that she would, in virtue of the powers conferred upon her by act of Parliament, divide that county into districts for the purpose of holding assizes. These memorials had been referred by her Majesty to a Committee of the Privy Council, which, after careful consideration, had agreed to recommend that a separate assize should be held in that part of the county called the West Riding. No final decision had yet been come to, nor had any Order in Council yet been passed.

Sir J. D. Hay moved an address praying her Majesty to nominate the town of Wakefield as the assize town for the West Riding of Yorkshire.

Mr. Leatham seconded the motion.

Sir G. Grey opposed the motion; which, after *Mr. Beauchamp, Mr. Roebuck, Colonel Smyth, Mr. Baines, Sir J. Pakington, and Mr. Hadfield* had addressed the House, was rejected, on a division, by a majority of 19—i. e. 138 to 119.

Mr. Warner, who had given notice of an intention to call attention to the operation of the law of settlement, said, as he had already had an opportunity of speaking upon the subject, and as the President of the Board of Trade had declared that, in his opinion, the question of union rating was only a question of time, he thought he should best serve the cause he advocated by not pressing any motion at present, and await the decision of the committee upon the subject of the poor law.

The House went into committee on the Insane Prisoners Act Amendment Bill.

On clause 2,

M. G. Hardy begged to move the omission of the word "death" in line 12 of the clause.

After a debate, in which *Mr. Neate, Mr. Macdonogh, Sir G. Grey, Lord R. Cecil, Mr. Hardy, Mr. M. Smith, Sir W. Jolliffe, Mr. Hunt, and Sir C. O'Loglen* took part, the amendment was rejected by a majority of 6—i. e. 32 to 26.

The clause was then agreed to, as were also clauses 2, 3, and 4.

Mr. G. Langton moved the insertion of a clause placing the charge for the maintenance of insane prisoners upon the common fund of the Union.

Sir G. Grey assented to the proposal, which was then agreed to, and the House resumed.

On the motion of *Mr. Bruce*, leave was given to bring in the following bills:—Bill to authorize the inclosure of certain lands in pursuance of a report of the Inclosure Commissioners for England and Wales; Bill to confirm certain provisional orders under the Land Drainage Act, 1861; Bill for the amendment of the law relating to the importation of diseased cattle and unwholesome meat; and a Bill to make further provision for the prevention of infectious diseases among cattle.

Tuesday, Feb. 23.

Mr. Adderley gave notice that on Thursday next he should move for leave to introduce a bill for the consolidation of the Penal Servitude Acts for England and Scotland, omitting the provisions for licences to be at large.

Mr. Locke King moved for leave to bring in a bill extending the franchise to 101 occupiers in counties.

Sir G. Grey offered no opposition to the introduction of the bill, as it appeared to be the general disposition that the bill should be brought in, and that all debate on it should be reserved for the second reading.

Leave was then given to bring in the bill.

Mr. Hibbert denounced public executions, and asked the Government whether they were prepared to substitute private for public executions, and moved for papers on the subject.

Mr. Hadfield seconded the motion.

Sir G. Grey defended the practice of public executions, and concluded by stating that he was not prepared with any proposal for the alteration of the law.

Alderman Sidney, Lord H. Lennox, Mr. B. Carter, and Lord Grey de Wilton having spoken on the subject.

Mr. Hibbert withdrew his motion.

Mr. S. Fitzgerald moved for copies of all correspondence between the various departments of her Majesty's Government, or officers in her Majesty's service, and Messrs. Laird Brothers, relating to the two ironclad vessels, The El Tousson and El Monassia, building by that firm, and seized by order of her Majesty's Government; and of any papers or correspondence that have passed between her Majesty's Government and the Government of the United States, or their representative, Mr. Adams, relating to the said vessels.

The Attorney-General defended the Government; and *Mr. Horsfall, Lord Robert Cecil, Mr. W. E. Forster, Sir H. Cairns, The Solicitor-General, Mr. Walpole, Mr. T. Baring, and Mr. S. Fitzgerald* having spoken on the question,

Sir G. Grey wished to be clearly understood, before the House proceeded to a division, that the papers asked for in the latter part of the motion the Government were ready to grant; and that the negative which the Government gave to the motion applied only to the former part, relating to the correspondence between the various departments of Government and Messrs. Laird.

The House then divided; the numbers were:—

For the motion..... 153

Against it..... 178

Majority..... —25

Mr. Black obtained leave to introduce a bill for the consolidation of the acts relating to copyright in works of literature and the fine arts, and the bill was brought in and read a first time.

Sir G. Grey moved that the report on the Insane Prisoners Act Amendment Bill be agreed to.

Mr. Hunt said, that when the bill was in committee, he had stated, that "Dr. Forbes Winslow had based his opinion of Townley's insanity chiefly on his extraordinary perverted moral sense." It had been represented to him that this was not a correct statement of Dr. Forbes Winslow's theory of the case, which was, that there was great moral obliquity in Townley, and with this a mental aberration; and, viewing these conjoint conditions, Dr. Forbes Winslow came to the conclusion that he was not of sound intellect. He (Mr. Hunt) did not see much variance between this correction and what he had himself stated, but he was anxious not, in any degree, to misrepresent Dr. Forbes Winslow to the House. He protested against moral obliquity being taken into consideration at all in estimating the sanity or insanity of a prisoner.

The report was then agreed to.

Wednesday, Feb. 24.

On the motion of *Mr. C. Forster*, a return was ordered, shewing the amount of felons' property forfeited to the Crown in each county, city, and town in England and Wales in each of the last sixteen years; with certain other particulars.

The Insane Prisoners Act Amendment Bill was read a third time, and passed.

On the motion of *Sir John Hay*, an address was agreed to for copy of memorials and documents relating to the holding of a separate assize in the West Riding of Yorkshire.

COMMISSIONER TO ADMINISTER OATHS IN CHANCERY.—The Lord Chancellor has appointed *Lewis Henry, Gent.*, of Liverpool, Lancashire, to be a Commissioner to administer oaths in the High Court of Chancery in England.

COMMISSIONER TO ADMINISTER OATHS IN COMMON LAW.—*Frederick John Blake, Gent.*, of the South Sea-house, in the city of London, has been appointed a London Commissioner for administering oaths in Common Law in the Courts of Queen's Bench and Common Pleas.

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THE JURIST.

LONDON, MARCH 5, 1864.

If any member of the National Association for the Promotion of Social Science should be at a loss for a subject, we venture to recommend "The social evils caused by misplaced humanity." There is nothing, however excellent in itself, that cannot by misapplication be converted into a source of mischief, and even the glorious quality of humanity forms no exception to the rule. Misplaced humanity, more properly called "humanitarianism," has been productive of great evils to society, the existence of which is unsuspected by many, and their full extent comprehended by few. To rescue so noble a quality from perversion and prostitution would be a great deed, especially, as whoever undertakes it must make up his mind to be misunderstood and misrepresented, to find his most disinterested exertions attributed to moral deficiency on his part, and an absence of the very virtue which he is endeavouring to serve, by directing it aright.

We advert to this subject at the present moment, in consequence of the bill brought into the House of Commons by the Home Secretary, Sir George Grey, to amend the Penal Servitude Acts, and an antagonistic bill on the same subject by Mr. Adderley. It will be remembered that a great increase of street robberies accompanied with violence, and of audacious burglaries, induced the Crown in December, 1862, to issue a commission to inquire into the operation of the acts relating to transportation and penal servitude. This commission presented its report last July, when two of its members, the Lord Chief Justice and Mr. Henley presented separate reports of their own entirely at variance with it. Another of the commissioners (Mr. Childers) while signing the report, dissented from a portion of it, and another (Lord Chelmsford) took no part in the proceedings. The names of the other commissioners, and the substance of the report, will be found in 9 Jur., N. S., part 2, No. 446, and two subsequent numbers.

The report of the Lord Chief Justice, to our mind at least, excels that of his colleagues in truth and sound sense, as well as in composition and expression. His Lordship there lays down the following principles:—

"It is necessary to bear in mind what are the purposes for which the punishment of offenders takes place. These purposes are two-fold; the first, that of deterring others exposed to similar temptations from the commission of crime; the second, the reformation of the criminal himself. The first is the primary and more important object: for though society has, doubtless, a strong interest in the reformation of the criminal, and his consequent indisposition to crime, yet the result is here confined to the individual offender, while the effect of punishment, as deterring from crime, extends not only to the party suffering the punishment, but to all who may be in the habit of committing crime, or who may be tempted to fall into it. Moreover, the reformation of the offender is

in the highest degree speculative and uncertain, and its permanency, in the face of renewed temptation, exceedingly precarious. On the other hand, the impression produced by suffering, inflicted as the punishment of crime, and the fear of its repetition, are far more likely to be lasting, and much more calculated to counteract the tendency to the renewal of criminal habits. It is on the assumption that punishment will have the effect of deterring from crime that its infliction can alone be justified, its proper and legitimate purpose being not to avenge crime, but to prevent it" (p. 85). "It may well be doubted whether, in recent times, the humane and praiseworthy desire to reform and restore the fallen criminal may not have produced too great a tendency to forget that the protection of society should be the first consideration of the lawgiver" (p. 86).

The Government having to choose between the report of the commissioners and that of the Lord Chief Justice, took the former, the chief provisions of which they seek to embody into an act of Parliament, in which they have diluted still further whatever strength is to be found in it. To pass over minor suggestions, the commissioners propose—first, and rightly, that short sentences of penal servitude should be abolished, and seven years fixed as the minimum time. The Government bill proposes to reduce this to five years.

2. The commissioners propose transportation to Western Australia on a large scale. The principle is a just one, for certain offences at least, but the proposal has been received by that colony with such a furious opposition, that our rulers, however considerate for the criminal classes, not being prepared to sacrifice our Australian colonies for their convenience, wisely abandon the recommendation.

3. The commissioners recommend the allowing convicts under sentence to earn, by their industry and good conduct in prison, a remission of part of their sentence. This, the Government bill approves and indorses.

4. The commissioners recommend the preservation of the ticket-of-leave-system, the demonstrated source of so much mischief to society: with some modification, it is true, calculated to render it a shade less mischievous.

On perusing the report of the commissioners, of Sir G. Grey's speech, and the Government bill, one is tempted to think that the interest and happiness of convicts is the primary, and the safety and happiness of society the secondary, consideration of them all. The common sense of mankind in every age except our own has reversed this order, which we have no hesitation in saying carries on its front the impress of mistaken humanity, or humanitarianism.

We proceed to point attention to some more of the evils which this unhappy sentiment has brought upon society.

The common sense of mankind has said in every age, punish crime, not for the sake of inflicting suffering on the criminal, but in order to deter others from copying his example, and, when the punishment is not co-evil with life, to prevent the criminal from repeating it. In furtherance of this view, the laws of

most countries have punished with death, murder and other serious crimes. But here up starts humanitarianism—"Man's life is a sacred thing, and must not be touched. It is legal murder to do so." Surely, however, the life of the person murdered was at least equally sacred with that of his murderer, and the latter has no right to consider himself injured if he is treated as he treated his victim.

"Of lawless force shall lawless Mars complain."

(Pope's *Iliad*, book 5, v. 1095.)

Sometimes the enemies of capital punishment have got themselves placed on juries with the determination of acquitting the accused, whatever the evidence against him. Here we have humanitarianism developing itself in the form of perjury.

Again: men commit serious offences against society, against the persons and property of individuals, and are righteously condemned to punishment by law. Morbid feeling steps in and says, do not punish them, or, at least, remit a portion of the punishment,—never reflecting that by this means encouragement is held out to others to copy their bad example, and an improper use made by the prerogative of mercy, one of the noblest in the hands of the Crown. Nothing can be more dangerous than *systematic* interference with the execution of the laws, and nothing better calculated to bring the decisions of judicial tribunals into contempt. Moreover, the determining a man's fate by a secret tribunal (be it of the Secretary of State or any other), is altogether at variance with the constitution of this country, especially when the effect of that decision is to reverse the solemn finding of a judge and jury. Here, again, we have "humanitarianism."

Again: the law, as at present administered, being totally unable to repress crimes, murder and violence stalk abroad; and in order to afford some remedy, society asks that the existing laws be put in force, and, if necessary, that more stringent ones be enacted. In steps humanitarianism again. Not more punishment; be gentle and humane. Increase the number of police, and honest men will be able to pass the streets in safety without being liable to be felled like oxen by ruffians at every corner. But it is obviously impossible to increase the number of police, so as to effect this object; and were it possible, the remedy is nearly as bad as the disease. Not only is an addition made to the police expenditure, but such a system has a tendency to degrade the national character, by teaching every man that he is to rely for protection not on his own arm, or on that of the law, but on a body of men set in motion by the Secretary of State. And here is a part of Sir G. Grey's speech particularly deserving notice:—"With respect to the increase of crime, so far as concerns the metropolis, it will be satisfactory to the House to learn the result of a comparison of the last six months of 1862 with the last six months of 1863, in reference to robberies with violence. In the last six months of 1862 there were fifty-two cases of that nature, while in the last six months of 1863 there were only twenty-six cases." He then adds, "My own belief is, that the crimes which caused so much alarm were committed by a comparatively small gang of persons, who, through the vigilance and activity of the police, were almost all apprehended and brought to justice, and who are now undergoing the penalty of their misdeeds." Credulity is supposed by some to be evidence of a happy state of mind; but, be this as it may, we confess our utter absence of belief in Sir George Grey's hypothesis.

The fate of Sir George Grey's bill remains to be seen. As we have already stated, Mr. Adderley, who

succeeded last session in carrying through Parliament a bill subjecting highway robbery to corporal punishment, has announced his intention to bring in a bill founded on antagonistic principles to that introduced by the Government. We trust we have shewn, that whatever the real value of humanitarianism, we have already paid for our indulgence in the feeling far more than that value, and hope that no further claims will be made on its account.

SOME recent decisions on the amount of damages which plaintiffs are entitled to recover have served to increase the great uncertainty which surrounds this question. In most cases in which a client consults his legal adviser as to his legal rights in respect of a breach of contract or a tort done to him, the principle of law which ought to regulate the advice which he receives is clear and well defined, and the difficulty, if any, consists in the application of that principle to the facts of the particular case; but on this question of damages there appears to be no ascertained principle of assessment, and we find the most learned judges disagreeing with each other on the subject; and the remark applies as well to actions of tort as to actions on contracts. Thus, in the case of *Johnson v. Stear* (10 Jur., N.S., part 1, p. 99), the facts were, that the bankrupt had deposited certain dock warrants for brandy in dock as security for a loan; and it was agreed that the pledgee might sell the brandy if the loan was not repaid on the 29th January. The pledgee sold the brandy on the 29th January, and delivered the dock warrants to the purchaser on the 29th January, and the purchaser took possession on the 30th January. *The bankrupt would not have redeemed the dock warrants*:—Held, that the sale and delivery of the dock warrants was a conversion by the pledgee; but as to the damages, held by Erle, C. J., Byles and Keating, JJ., that they were merely nominal; by Williams, J., that they were the whole value of the goods at the time of the conversion.

Thus, upon a very clear and limited set of facts, there is, in this case, the widest possible difference of opinion between the judges as to the measure of damages: the conflicting judgments deserve attentive perusal; the ground of the difference of opinion appears to be, that the three judges, who held the damages to be nominal, considered that the property or interest of the pledgee in the brandy was not determined by the premature sale on the 29th January, while Williams, J., held that it was; and we cannot help thinking that his judgment is more consistent with established rules of law and previous decisions than that of the other members of the Court. The fact that the bankrupt would not have redeemed the dock warrants had the sale been deferred to the 30th January, and therefore that the sale on the 29th made no difference to him, surely ought not to bear upon the question. The question is, whether the premature sale determined the interest of the pledgee in the goods? If it did, the property in them immediately reverted to the bankrupt, and as he was entirely deprived of them by the sale, his damages were their full value. The consideration that he still owed the debt in respect of which they were pledged, ought not to be introduced into the case, as *in law* there was a remedy for that debt. We offer, however, these remarks with the greatest diffidence, but we may certainly appeal to this case as an instance of the great uncertainty

which exists as to the principle upon which damages are to be assessed.

Another recent decision to which we would call the attention of our readers is that of *Duckworth v. Ewart* (10 Jur., N. S., part 1, p. 214). The marginal note runs thus—"The defendant, an incumbrancer on land, broke a covenant which he had made with the plaintiff, a speculator, to join in a conveyance to A., with a view to a project by which the plaintiff was to realise the value of the land, as building land, with profit to himself:—Held, per Pollock, C. B., and Bramwell, B., that he was only liable in damages for the expenses of preparing the deed of conveyance; per Martin, B., that he was liable, in addition, for the loss of profit to the plaintiff." The learned baron appears, in his judgment, to have looked at the case as a common case of breach of contract, while the Chief Baron and Bramwell, B., considered that it was within that class of cases in which it has been held, that on the breach of a contract for the sale of lands, the expenses of investigating the title, &c., are the measure of damages. Speaking, again, with the utmost diffidence, we are inclined to think that the latter is the correct view.

Whichever is the right opinion, the case presents another instance of the uncertainty of the principle on which damages are to be assessed. There are excellent books on the subject, those of Messrs. Sedgwick and Mayne; and yet there is perhaps no subject on which the law is in a more unsatisfactory state; and the difficulty in applying a remedy is extreme, for of course the Legislature cannot pass a law by which damages are in all and every case to be regulated, and no one decision in the House of Lords would govern every question which may arise. Still such a decision might clear away many doubts and difficulties, and put an end to much of the uncertainty with which the well-known case of *Hadley v. Baxendale* (23 L. J., Ex., 178), and the many extensions and applications—and, perhaps, misapplications—of that decision have involved the subject.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—In your leading article of the 27th February, you refer to the judgment of the Lord Chancellor in the recent case of *Suffield v. Brown*, for the purpose of expressing your dissent from the remarks there made on the case of *Pyer v. Carter* (1 H. & Norm. 916). I venture to think that the same fallacy pervades your remarks and the judgment in *Pyer v. Carter*, viz. that of ignoring the fact that the alleged servient tenement was sold first, by the owner of both, who retained the alleged dominant tenement, and afterwards sold it to another purchaser. Had it been the case that the alleged dominant tenement had been sold first, there could not have been a doubt that the purchaser would, as against his vendors and his subsequent assignees, have been entitled to the enjoyment of the easement claimed; but, as the case was, the only ground on which *Pyer v. Carter* can be supported is, that on the grant of one tenement by the owner of two adjoining tenements, there is an implied reservation of all continuous and apparent easements. It is admitted that it was not an easement of necessity that was claimed, as the purchaser could have made a communication from under his own premises with the main sewer at a very trifling cost. In support of this position, you adduce two cases, *Riviere v. Bower* (1 Ry. & M. 24) and *Swansborough v. Coventry* (9 Bing. 305). These do not seem to me to establish it very clearly.

In the former, a lessee was prevented from obstructing a window of his lessor, who occupied the adjoining house, in a manner which would have been prevented if he had been a perfect stranger to the lessor. In the latter case, the owner of a house and land adjoining, sold the house and land to different purchasers at the same time; and it was held, that the purchaser of the house had a right to have his windows free from any obstruction by the purchaser of the land. Here, although the sales were simultaneous, the case was held to be within the general rule, that a grantor cannot derogate from his own gift. *Pyer v. Carter* was a much stronger case.

In the case of *Dodd v. Birchall* (8 Jur., N. S., part 1, p. 1180), which was a case of a right of way, Martin, B., remarked, that he thought the case of *Pyer v. Carter* had gone to the extreme verge of the law. In the same case, Wilde, B., says, "Where a man has used his premises in a certain way for some time, and it can be brought home to the knowledge of the purchaser, the conveyance may be supposed to be made with an intention of reservation on the part of the grantor, and the land passes subject to such a user. But here there are no such facts, and I think it would be most dangerous, the deed being silent on the point, to assume such a reservation between the parties." The case of *Ewart v. Cochrane* (7 Jur., N. S., part 1, p. 925), where *Pyer v. Carter* is certainly quoted as laying down the law, was a case in which the alleged dominant tenement was sold first. In conclusion, my argument amounts to this—first, that the vendor, having granted one of two adjoining tenements without reserving any easement, would not, as between his purchaser and himself, have any right to an easement except such as was of necessity, and except, perhaps, a continuous and apparent easement, the knowledge of which could be brought home to the purchaser; secondly, that a subsequent purchaser of the other tenement is in the same position as his vendor, who cannot derogate from his previous grant to the first purchaser, so as to create any right which the vendor himself did not possess; and, therefore, as the case of *Pyer v. Carter*, the alleged easement was not of necessity, and it was not shewn that the purchaser of the first tenement was aware of the existence of the drain, I venture to think that the case was erroneously decided.

I am, Sir, your obedient servant,
Lincoln's Inn, March 1. O. E. F. N.

TO THE EDITOR OF "THE JURIST."

728, Spruce-street, Philadelphia,
Feb. 5, 1864.

SIR,—A recent number of your "Jurist" (ante, p. 5), in referring to a little tract of mine called "The Reporters," contains, along with some more flattering references to the work, the following remarks:—

"THE REPORTING SYSTEM."

"In our article of the 26th December, 1863, on the duties of the committee appointed at the meeting of the Bar in Lincoln's-inn Hall to inquire into the reporting system, we referred to the statement made by Mr. Daniel, that the cause of the cessation of the Year-Books in the 27 Hen. 8, was to be found in the rapacity of that monarch, who wanted for other purposes the money which had been set apart for the salaries of the reporters; adding, that no authority was cited for this assertion, and we were not in a condition either to confirm or refute it. Mr. Daniel has since informed us that he is under the impression that he cited an authority for it; but, be this as it may, the authority on which he relies is the work of Mr. William Wallace,

an American writer, intitled 'The Reporters, chronologically arranged,' third edition, Philadelphia, 1855, which may be seen in the library of Lincoln's-inn. The passage, which is at p. 75, runs as follows:—

"The Year Book of Hen. 8, particularly after the 12th year of that king, is said to be inferior to any of the Year Books which preceded it—a fact which is attributed to the very efficient cause, that the stipend which had been paid in former reigns was dropped in the time of Hen. 8."

"It is worthy of observation, that in the preceding page we are informed, and truly, that there is no Year Book of that reign *previous* to the 12th year. The only years of Hen. 8 are the 12th, 13th, 14th, 18th, 19th, 26th, and 27th. Neither does Mr. Wallace cite any authority for the position here advanced; and it is impossible to accept, as authority on such a subject, the ipse dixit of a person, and that, too, a foreigner living near 350 years after the event."

Will you allow me to state that the authority for the position here advanced—the position, I mean, that "the Year Book of Hen. 8, particularly after the 12th year of that king, is said to be inferior to any of the Year Books which preceded it," is a work issued from your own Bar, intitled "The Law Magazine, or Quarterly Magazine of Jurisprudence," for many years past, and still, published in your own city, London. In that work (vol. 4, p. 6; Saunders & Bennings, London, 1830) are these words:—

"The Year Books are continued down to the 27 Hen. 8; but the cases decided subsequently to the twelfth year of that king do not bear the same authority as the rest, and are not supposed to have been officially reported."

The authority for the other fact stated by me—the fact, I mean, that the inferiority above referred to, is attributed to the circumstance, that "the stipend which had been paid in former reigns was stopped in this"—is a work purely English also; a no less work than "Reeves's History of the English Law." That ornament of your bar, Mr. Reeves, writing in the last century, says as follows:—

"The Year Book (of Hen. 8) is a very scanty one, compared with those which went before, owing, probably, to persons being no longer encouraged with a stated appointment to execute this task."—Reeves's History of the English Law, vol. 4, p. 414: London, 1787. Second Edition.

Neither part, therefore, of the "position"—or statement, rather, as I myself should call it—"advanced" in my Reporters, resta, as you assume, on the authority of a "foreigner." Whatever of the ipse dixit there may be in the case, lies with your own respectable countrymen (neither of whom cites authority), rather, perhaps, than with me; though I could readily refer to the early English writers from whom even their impressions were derived.

Neither, I beg to say, is there, as you apparently intimate, an inconsistency between what I say on p. 75 and what I had stated "on the preceding page." On that preceding page I speak of cases *previous* to the twelfth year. On p. 75—the following page—I speak of cases *after* the twelfth year. But the twelfth year itself is included in neither mention. It has its independent character, of which "particularly" I do not speak.

You will do me, I am sure, the favour to give to this note the same publicity which you have given to your suggestion, that I may, perhaps, have spoken inconsistently, and without due regard, to what had been written before me.

I am, with great respect, Sir,

Your obedient servant,

JOHN WILLIAM WALLACE.

[We have much pleasure in inserting Mr. Wallace's letter. He is an able and useful writer, and we regret if we have misunderstood him, ever so slightly.]

On the first question, Mr. Wallace fully exculpates himself by shewing that he has merely copied his statement from *The Law Magazine*. No reference, however, is there given for that statement, and a periodical of the nineteenth century is not a book of authority for antient English law; added to which, the passage is not very clearly expressed. We doubt whether the writer meant that the Year Book of the 12 Hen. 8 was the sole good one of that reign, and all the rest indifferent. Even Sir W. Blackstone falls, apparently at least, into the error of supposing that the Year Books "are extant in a regular series," from 1 Edw. 2 to 27 Hen. 8. (See 1 Com. 71).

On the second matter, we really do not see that Mr. Wallace has any just cause of complaint against us. On the occasion to which he refers, we asserted, and are by no means disposed to shrink from the assertion, in which we trust every reflecting person will agree with us, that on the question as to the causes which produced the cessation of the Year Books in 1527, we could not think of accepting the ipse dixit of any person living 350 years after the event, and that the circumstance of that person being a foreigner certainly did not improve the matter. If Mr. Wallace is dissatisfied with this, he must thank himself for putting forward such a statement without citing any authority for it.

He now, however, does cite his authority, viz. the following passage from Reeves's History of the English Law, vol. 4, p. 414, 2nd ed.:—

"The Year Book (of Hen. 8) is a very scanty one, compared with those which went before, owing, probably, to persons being no longer encouraged with a stated appointment to execute this task."

Here, again, is only the testimony of a writer living centuries after the event, and it scarcely bears out the statement of Mr. Wallace; and still less that of Mr. Daniel, that the cessation of the Year Books was owing to the rapacity of King Hen. 8, who wanted for his own purposes the money set apart for the payment of the reporters.

We wish Mr. Wallace had given his references to the early English writers from whom, he says, the *Law Magazine* and Mr. Reeves derived their impressions on this subject. We are only anxious to ascertain the real truth, which we have no doubt would be acceptable to the committee on reporting which is now sitting.

But as Mr. Wallace has referred to Reeves's History, we regret that he did not add another passage from the very same page, which more fully explains Mr. Reeves's meaning, and which we take leave to recommend to the particular attention of Mr. Daniel, and all who deplore the cessation of the Year Books, and advocate the revival of that system of reporting at the present day:—"Perhaps, since a taste for all kinds of learning had begun to prevail, the opinion of this establishment of reporters was altered, and it was thought more advisable to trust to the general inclination discovered in private persons to take notes; who, probably, from a competition, would do more towards rendering this department perfect and useful, than any temptation from a fixed salary: whatever might be the reason, such a stipend was no longer continued, and the undertaking dropped."—ED.]

QUEEN'S BENCH CHAMBERS.

NOTICE.—Feb. 29, 1864.

The following Regulations for transacting the business at these Chambers will be strictly observed till further notice:—

Acknowledgments of deeds will be taken at ten o'clock.

Original summonses to be placed on the file.

Summonses adjourned by the judge will be heard at half-past ten o'clock.

Summonses of the day will be called and numbered at a quarter before eleven o'clock, and heard consecutively.

The parties on two summonses only will be allowed to attend in the judge's room at the same time.

All long orders to be left, that they may be ready on being applied for the following day.

Counsel will be heard at one o'clock. The name of the cause in which counsel are engaged to be put on the counsel file.

Affidavits in support of ex-parte applications for judge's orders (except those for orders to hold to bail) to be left the day before the orders are to be applied for, except under special circumstances; such affidavits to be properly indorsed with the names of the parties, and of the attorneys, and also with the nature of the application, and a reference to the statute under which any application is made, the party applying being prepared to produce the same.

All affidavits read or referred to before the judge to be properly indorsed and filed.

BOOKS RECEIVED.

Private Law among the Romans, from the Pandects. By John George Phillimore, Q. C. 8vo., pp. 455.—Macmillan.

A Table of References to Three Thousand unreppealed Public General Acts, arranged in the Alphabetical Order of their short and popular Titles. By John Biddle. 8vo., pp. 68.—E. Cox.

The Right Hon. Sir William Erle, Knt., Lord Chief Justice of her Majesty's Court of Common Pleas at Westminster, has appointed Marcus Louis, Gent., of Ruthin, in the county of Denbigh, to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Denbigh.

JURIDICAL SOCIETY.—A meeting of this Society took place at its rooms, 4, St. Martin's-place, Trafalgar-square, on Monday, the 29th February, Thomas Chambers, Q. C., Common Serjeant, in the chair; when the debate on Mr. J. W. Hume Williams's paper, intitled, "The legal Notion of unsound Mind, constituting Irresponsibility for Crime, as exemplified in the Case of George Victor Townley," and the proposal of Dr. Forbes Winalow, that instead of the charge now usually given to juries in criminal cases, where insanity is set up as a defence, the following be substituted:—"Was the prisoner insane when he committed the crime, such insanity being the effect of a disorder of the brain; and was he, in consequence of this mental and physical condition, incapable at the time of exercising a healthy control over his thoughts and actions," was resumed. The adjourned debate was opened by Mr. Lindley, who was followed by Mr. Fry, Mr. Worsley, Mr. Edward Webster, Mr. W. M. Best, the Chairman, and Dr. Forbes Winalow; and Mr. J. W. Hume Williams, in reply.

Imperial Parliament.

HOUSE OF LORDS.—Monday, Feb. 29.

Earl Granville moved the second reading of the Insane Prisoners' Bill.

After some observations by Lord St. Leonards and Lord Woodhouse, the bill was read a second time.

HOUSE OF COMMONS.—Thursday, Feb. 25.

Mr. Cave gave notice of his intention to ask the Secretary of State for the Home Department whether it is proposed to grant licenses or tickets of leave, under any circumstances, to prisoners whose sentence of death has been commuted to penal servitude for life.

Sir G. Grey said that he was glad to have an opportunity of stating, that prisoners under sentence of penal servitude for life, whether their sentences had been commuted or not, formed a distinct class, separate from the other prisoners, and not entitled to the benefit of those regulations under which the others were entitled to a remission of their sentences. The rule in the case of prisoners under sentence of penal servitude for life was, that any claim to a remission of punishment was considered on its own merits, but that no expectations of a remission of sentence were held out to them.

Mr. Adderley obtained leave to introduce a bill to consolidate the Penal Servitude Acts for England and Scotland.

Friday, Feb. 26.

Colonel W. Patten asked the Secretary of State for the Home Department whether it was his intention to introduce any bill during the present session to amend the Highways Act, passed during the last session of Parliament.

Sir G. Grey said his honourable and gallant friend was probably not aware that he had already stated, a few nights ago, in answer to a similar question, that he hoped to introduce a bill on the subject. A memorial bearing on the subject had, however, reached his hands, and he wished to consider this before bringing in the measure.

Mr. Morritt asked the Secretary of State for the Home Department whether it would be possible for Townley, lately convicted of murder, whose sentence was commuted to penal servitude for life, to obtain, by good conduct or otherwise, at any future period of his life, a license or ticket of leave to be at large and free from restraint in either this or any other country.

Sir G. Grey.—I will only repeat the answer which I gave to a question on the same subject before, namely, that convicts under sentence of penal servitude for life, whether that sentence is original or remitted, are not entitled to the benefit of those regulations by which other convicts, under certain fixed conditions, may obtain the remission of portions of their sentences.

The Conveyancers' (Ireland) Bill went through committee.

Monday, Feb. 29.

Mr. Roebuck said, that on going into Committee of Supply, he should call attention to the Report of the Inspectors of Constabulary, ordered to be printed on the 19th February, 1864, and ask the Home Secretary whether any resolution had been taken on the subject of the spy system, as carried on by the police.

Mr. Alcock wished to ask the President of the Board of Trade whether he proposed during this session to amend the 85th clause of the Lands Clauses Act, which enabled railway companies to obtain compulsory possession of land under order of magistrates.

Mr. M. Gibson.—The Government have no intention of passing a bill to amend the 85th clause, to which the honourable gentleman refers.

Sir W. Miles (for Colonel Patten) asked the President of the Board of Trade whether he intended to proceed with his bills for the amendment of the private business of the House, so as to enable parties to take advantage of them during the present session; and whether the parliamentary bar had made any communication to him with respect to a change in the system of counsel's fees.

Mr. M. Gibson said, that the two bills to which the hon.

gentleman referred stood for a second reading, and he hoped to be able to proceed with them, so that parties should have the benefit of them this session. In answer to the second question, he had to state that he had that day received a letter from an influential member of the parliamentary bar, and which he believed had the concurrence of the leaders of that bar. The communication was satisfactory, as far as it went, although, perhaps, not dealing with the whole question. The communication stated that "it was understood that it was not to be considered inconsistent with the etiquette of the parliamentary bar for any counsel to appear before a committee of either House of Parliament, if he should think fit, at a lower rate of fees in respect of daily attendances and consultations than that which had hitherto prevailed." From the conversation that passed, he understood the meaning of this document to be, that any counsel should be permitted to take a case with a small refresher, or without any; and, with regard to consultations, that the fee should be such as might be settled between the solicitor and the barrister, and without reference to the present practice of having a minimum of five guineas for each consultation. He was further informed that this consultation fee was not in future to be taken as a matter of course, but was only to be allowed in cases where the consultation was considered necessary by the parties, and had actually been held. He was told that no change was to be made in the fee upon the retainer or the fee upon the brief, each of which was to be restricted to its present amount as the minimum, namely, five guineas on the retainer and ten guineas on the brief, so that it would be now impossible to appear before a committee in any case for less than fifteen guineas. At present it was not possible to appear for less than thirty guineas, and the House would see that a very considerable reduction had been made by the parliamentary bar. He hoped that, the subject having now come under their consideration, they would be able to make such a change in their system as to admit of counsel practising before parliamentary committees under the same rules as prevailed in the ordinary courts of law.

Mr. *Bentinck* said, in consequence of the unsatisfactory state of things indicated by part of the answer of his right hon. friend, he wished to ask, whether, in the event of the parliamentary bar not undertaking to alter the system still further, it was the intention of her Majesty's Government to deal with the question.

Mr. *M. Gibson* replied, he could only say that what he had indicated was a possible course, and he would rather not commit himself further on the subject. He should prefer to leave it in the hands of the parliamentary bar.

Mr. *Hadfield* inquired whether it was competent for the public to employ barristers to conduct their business before parliamentary committees on such terms as they might think fit.

Mr. *M. Gibson* said, so far as he was informed, there was no rule of the bar in general which would prevent counsel practising before parliamentary committees from taking the same fees as were permitted to be accepted in the courts of law and equity. Whatever rules there were upon the subject were made by the parliamentary bar, and it was altogether a question of professional etiquette.

Mr. *R. Peel* obtained leave to bring in a bill to amend the law relating to bills of exchange and promissory notes in Ireland.

Tuesday, March 1.

Mr. *Hibberd* asked the President of the Poor-law Board whether, with a view to simplify and render more easy of reference the very numerous statutes relating to the relief of the poor, any effort was being made by the Poor-law Board to procure the consolidation of such statutes.

Mr. *Villiers* said, that the Poor-law Board did not at present contemplate making any effort to consolidate the statutes relating to the poor.

The Conveyancers' (Ireland) Bill was read a third time and passed.

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In the case of *The Attorney-General v. Abdy* (8 Jur., N. S., 798), Baron Martin said—"I find that this view is taken in a book, with which we agree, written by Mr. Trevor. We have had it in use in this court ever since questions arose on the Succession Duty."

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In the parliamentary debate on disqualified witnesses (House of Commons, Feb. 12, 1861), referring to the case of *Maden v. Catnach*, Sir G. C. Lewis said, "He would read from Starkie on Evidence, which was known to be a standard work upon the subject, a statement of the law as applicable to the case (vide Examination as to Religious Belief, pp. 115, 116). That is a clear statement of the rule of law upon the subject."

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THE JURIST.

LONDON, MARCH 12, 1864.

THE bill introduced into Parliament by Sir Fitzroy Kelly, intitled "A Bill to amend an Act of the Eleventh and Twelfth Years of her Majesty, c. 78, to provide a further Appeal in Criminal Cases, and for the further Amendment of the Administration of the Criminal Law," the object of which is to allow of new trials in criminal cases, stands for a second reading; and as its effect would be to produce almost a revolution in our criminal procedure, we trust that, notwithstanding the strife of the two great political parties, and we fear we must add the probability of foreign war, it will be received with the attention its importance deserves.

The strongest argument in favour of the proposed change is to be found in the system followed at the Home Office with respect to pardoning and remitting sentences of convicted criminals. One object of the bill is to put an end to that system, and, as it is scarcely possible that any change could be for the worse, the proposal of Sir Fitzroy Kelly stands at least a chance of turning out an improvement. This ought not, however, to deter us from examining the proposal on its merits.

It might at first sight be imagined, that Sir Fitzroy Kelly's object was to extend to criminal proceedings the practice which exists in civil suits, of granting a new trial when there are legal and reasonable grounds for believing that the verdict found by the jury is against the evidence. But it is nothing of the sort: as is apparent not only from the provisions of the bill, but from its very preamble, which, after referring to the statute establishing the Court of Criminal Appeal, recites, that "it is expedient to extend the jurisdiction of the said justices and barons, and to provide an appeal *by or on behalf of* DEFENDANTS in criminal cases." The bill then proposes to enact (sect. 2), "Whenever any defendant shall have been found guilty of any treason or felony, it shall be lawful for her Majesty's Court of Queen's Bench, her Majesty's Court of Common Pleas, her Majesty's Court of Exchequer, or the said Court of Criminal Appeal, upon motion to be made by or on behalf of such defendant, upon affidavit or otherwise, to grant a rule to shew cause why the verdict of guilty so found, and all proceedings, if any, thereupon had, should not be set aside, and a new trial had, or a verdict of not guilty be entered in lieu thereof, and judgment thereupon, or why the judgment should not be arrested or reversed; and in case any such rule shall be granted, the matter of such rule shall be heard and determined before the said Court of Criminal Appeal; and the said Court shall have full power and authority to hear and determine the matter of the said rule, and to order that the verdict of guilty, and all proceedings, if any thereupon had, shall be set aside, and that a new trial shall be had, and that a verdict of not guilty shall be entered in lieu thereof, and of the judgment thereupon, if any judgment shall have been given, or

that the judgment shall be arrested or reversed, or to make such other order as justice shall require: provided, that no such motion shall be made, unless a Barrister-at-law shall have certified under his hand that there is, in his judgment, reasonable ground to appeal: provided also, that if it shall appear to the said Court of Criminal Appeal that any new or further inquiry is expedient, as to any particular question of fact or otherwise, but that it is not expedient that the whole case should be tried again, it shall be lawful for the said Court to order such question to be tried in the like manner, and before the same Court, as would have tried the case if a new trial had been granted; and every such question shall be inserted in a rule, and the jury shall be duly sworn to try the said question; and in every such case it shall be lawful for the said Court of Criminal Appeal, if it shall think fit, to postpone its determination as to the said rule, until such question shall have been so tried, and then to determine the said rule: provided also, that in every case in which any application shall be made on the ground of the alleged insanity of the defendant, the said Court of Criminal Appeal, if it shall think there be reasonable ground for an inquiry into such insanity, may order the question to be tried separately, whether any other question may, or may not, be ordered to be tried." The other sections of the bill (there are 18 sections in all) contain the machinery for carrying out this object.

It will be seen from the above that the bill is both avowedly and actually a bill for the benefit of *defendants* in criminal cases, and therefore, according to all true principles of legislation, we are bound to inquire, what is the existing evil which renders desirable the proposed alteration of the law,—before we even think of the remedy, we should first ascertain the nature of the disease.

Now, will it be contended that British juries are in the habit of erroneously *convicting* accused persons. If so, a more unfounded charge was never brought against any body of men. If our juries had been charged with erroneously *acquitting* them, a good deal might be said. We frequently see persons, of whose *moral* guilt no reasonable doubt could be entertained, acquitted because the *legal* proof falls short, or because some fantastic scruple arises in the minds of the jury; but the cases where an accused person, who has both moral and legal merits in his favour, is convicted, are in our day rare; and where the offence charged is one affecting life, so rare as almost fit to be characterised as nonentities. Yet it is for such cases that Parliament is now asked to legislate; while for the vastly more numerous cases of improper acquittal the law is to remain in its present state. "Ad ea quæ frequentius accidunt jura adaptantur" is a maxim not only of English law, but of general jurisprudence, which, if the present bill passes, ought to be reversed. Moreover, the want of reciprocity in this bill shews incontestibly that the equal administration of justice between Crown and subject is not its object. A few years since a bill was introduced into the House of Commons by some hon. member (we believe Mr. M'Mahon) resembling in

many respects that of Sir F. Kelly, but containing a clause, that the Court above might in its discretion grant a new trial when the verdict was in favour of the accused, if it deemed that verdict contrary to the evidence; but that clause was received by the House with a disapprobation so unequivocal that no person has since repeated the experiment, and Sir F. Kelly declines to do so now. It is, perhaps, needless to observe, that the granting an appeal to one of the litigant parties, and not to the other, is a violation of every principle of justice, and is only worthy of that unhappy class of the community which looks on all criminal law as a natural enemy, and deems all means allowable to rescue victims from its clutches. Good citizens look up to the law as their protector, and the preserver of the peace of society, and bear in mind its maxim, "Minatur innocentes qui parcit nocentibus."

There is one argument in favour of Sir F. Kelly's bill which is worthy of notice. By the existing law new trials may be granted in criminal cases tried in the Court of Queen's Bench; and there is, at least, one case in the books, *Reg. v. Scaife* (2 Den. C. C. 281), in which that Court granted a new trial in felony. Now, it may very fairly be asked why this difference—what reason is there that a man, who has the good fortune to be tried in the Queen's Bench, has the right to move for a new trial if the verdict is against him, while, if tried at the assizes, he has no such right? We confess we see none; but if legislation on this subject is called for, it may be a question whether the practice of other criminal courts ought to be assimilated to that of the Queen's Bench, or that of the Queen's Bench assimilated to them. In any event, if the practice of the Court of Queen's Bench is to be taken as the model, why not take it in its entirety? In other criminal courts the person on his trial is placed at the bar, exposed to the view of the jury and the public—a practice beneficial on many grounds, too numerous to specify on the present occasion. In the Court of Queen's Bench this is not so; the accused may be present as one of the auditory, and perhaps not present at all.

There are many other objections, both to the principle and details of Sir F. Kelly's bill. If passed, it certainly will be a great comfort to the criminal classes of the community, especially such criminals as are of the wealthier order; who will be further relieved by another bill now before the House, introduced by Mr. C. Foster, namely, to abolish all forfeiture on conviction of treason or felony. Whether this simply means that a criminal shall not forfeit lands or goods, or whether it goes farther and protects him from the forfeiture of civil rights, we are not aware. If the latter, it certainly would be an edifying scene to witness a convict under sentence of penal servitude, perhaps for murder or felonious assault, brought up by habeas corpus to exercise his right of voting at an election for members of Parliament. But taking for granted that the bill does not go that length, it would be something very like a mockery of justice to see a rich criminal, who is waiting his execution for treason or murder, send for his lawyer, and draw up deeds

disposing of his real and personal estate, with the usual conditions, limitations, clauses of forfeiture, &c., carefully providing for the payment of the stamp duty, that his children shall not marry ineligible persons, &c. Parliament has, however, got both these bills before them, and it remains to be seen how they will be dealt with.

OUR correspondent C. E. F. N. has, we think, not only mistaken the drift of our remarks in the leading article of the 27th February, last, but also the entire scope of the judgment of the Lord Chancellor in *Suffield v. Brown* (10 Jur., N. S., part 1, p. 111).

Our remarks entirely turn upon the implied reservation of apparent and continuous easements by the owner upon a sale of part of a heritage, and we do not ignore the fact, therefore, "that in *Pyer v. Carter* the alleged servient tenement was sold first."

Our learned correspondent says, that he arrives at the conclusion, "that the vendor, having granted one of two adjoining tenements without reserving any easement, would not, as between his purchaser and himself, have any right to an easement except such as was of necessity, and except, perhaps, a continuous and apparent easement, the knowledge of which could be brought home to the purchaser." Now, if our correspondent will again carefully read the judgment of the Lord Chancellor, he will find that his observations are directed against the whole doctrine of the implied reservation of apparent and continuous easements; and his Lordship lays it down distinctly, "that the grantor cannot derogate from his own absolute grant, so as to claim rights over the thing granted, even if they were, at the time of the grant, continuous and apparent easements, enjoyed by an adjoining tenement which remains the property of him the grantor."

With regard to the case of *Pyer v. Carter*, our learned correspondent thinks that it was wrongly decided, because "it was not shewn that the purchaser of the first tenement was aware of the existence of the drain." But if he will look at the judgment of the Lord Chancellor, he will find that his Lordship considered that the purchaser, not only was under no obligation to make any inquiry as to the drain, but that he "would not be affected by the result of such inquiry."

The Lord Chancellor, in effect, says, that the law will not imply a reservation of apparent and continuous easements against the express grant of the grantor; our correspondent thinks the law will perhaps imply such grant when the purchaser was aware of such easements, which, ex hypothesi, he must be taken to know when they are continuous and apparent.

In our remarks upon *Pyer v. Carter*, we assumed that the easement in that case was apparent and continuous, but we admit that the Court, in considering it to be of such a character, went perhaps "to the verge of the law."

WE regret to observe in the papers the following scene at the Central Criminal Court, on Tuesday, the 1st March:—

Francis Giles, an attorney's clerk, surrendered to an indictment charging him with embezzling money belonging to a friendly society.

Mr. Metcalfe was counsel for the prosecution; and Mr. F. H. Lewis defended the prisoner.

Mr. Commissioner KERR, in summing up the case, pointed out circumstances in the prisoner's conduct, which, in his opinion, went to negative the suggestion of fraud, and to shew rather that the charges against the prisoner were only irregularities due to an elaborate system of forms with which he had to deal. He remarked upon the impropriety of recourse being had to a criminal prosecution in such a case, and said, that under the Friendly Societies Act, and at a cost of only a few shillings, the prisoner might have been cited before a county court judge, and ordered to pay the money in dispute; but, unfortunately, the society consulted a lawyer, and hence this prosecution.

The jury acquitted the prisoner.

The prisoner was then arraigned on another specific charge of embezzlement, alleged to have been committed under similar circumstances, and of which in the result he was also acquitted, under the ruling of the learned judge, who remarked, by the way, that it would only have been graceful for the society to have retired from the prosecution after the first verdict.

Mr. Metcalfe proposed to proceed with a third indictment against the prisoner. The learned judge, he said, had remarked, that it was a graceful act for a counsel to withdraw from a case where a jury had given a verdict which practically decided the questions in issue. He admitted that such a course was frequently taken where a verdict really appeared to be conclusive as to the whole matters in dispute; but that, in his opinion, was not so in the present case, and therefore he proposed to go on with the prosecution, knowing nothing and caring nothing, as he did, as to what was graceful or otherwise where duty and conscience imposed upon him a certain course. In such a case he had only a duty to perform to his clients, regardless of either judge or counsel. Had the Court been differently constituted, he might not have thought it necessary to make any excuse for proceeding, but—

Mr. Commissioner KERR, interposing, begged that the learned counsel would withdraw that remark, or he must adjourn the Court.

Mr. Metcalfe asked to what remark the learned judge referred.

Mr. Commissioner KERR.—The remark to the effect, that if the Court had been differently constituted you would not have made such and such observations. I call on you to withdraw that remark.

Mr. Metcalfe said, if his Lordship had not made an observation calculated to embarrass him in the discharge of his duty, he would not have made the remark which appeared to have given umbrage.

Mr. Commissioner KERR.—I will not argue the question with you. I say you have made an observation disrespectful to the Court, and, unless you retract it, I will command that the Court be adjourned.

Mr. Metcalfe.—Your Lordship made an observation reflecting on my clients and on me in the discharge of my duty to them. I did not intend to shew any disrespect towards your Lordship.

Mr. Commissioner KERR, rising from his seat and addressing the sheriffs, directed them to adjourn the Court. Turning to the jury, he said he was sorry to have to adjourn the further consideration of the case.

Mr. Metcalfe hoped his Lordship would not resort to a course which would result in the jury being locked up for the night.

Mr. Commissioner KERR should be compelled to do so unless the offensive remark were withdrawn.

Mr. Metcalfe said, if his Lordship thought he had said anything disrespectful to him he would retract it, but he did not think he had.

Mr. Commissioner KERR ventured to say that every member of the Bar would concur with him, that the remark was offensive and discourteous.

Mr. Metcalfe then withdrew the observation, explaining, in doing so, that he had only felt it his duty to protect his clients in the matter, and that he had not intended to say anything discourteous towards the Bench.

The case then proceeded on its merits.

INJUNCTION TO PROTECT THE ENJOYMENT OF PROPERTY.

(*Ipsen v. The East India House Estate Company*, 10 Jur., N. S., part 1, p. 221).

THE present Lord Chancellor is remarkable for the bold and decided course which he usually takes with reference to any doubtful question of law or practice; no doubt a valuable quality in a judge. He has shewn this on several occasions, especially in his recent decisions on the law of trade marks, and in the case of *Ipsen v. The East India House Estate Company*, quoted above. The decision in this case has an important bearing on the practice of the Court of Chancery in granting injunctions in cases of obstruction to light.

Our readers will remember that an important distinction exists between cases where an injunction is sought to be obtained upon an interlocutory motion, and those cases in which the same application is made at the hearing of the cause. In the former case, the granting of the injunction is in the discretion of the Court; and the Court will take into its consideration the balance of convenience and inconvenience to the parties, which would attend the granting or refusal of the injunction, and a variety of other circumstances. At the hearing of the cause, on the other hand, it has always been understood that the Court will regard the rights of the parties only. Another distinction is noticed by the Lord Chancellor between injunctions which are of a preventive character, and what he terms mandatory injunctions, i. e. those which command a party to the cause to do some act, as, for example, to remove an obstruction already erected.

Strictly speaking, the term mandatory injunction is incorrect. The Court does not command a person to do a particular thing; but it produces precisely the same effect in an indirect manner. It does not command a man to pull down a house, which he has wrongfully built, but it forbids him to allow it to remain standing. The result is precisely the same; and it would be much better if the Court felt itself justified in altering its phraseology, and so putting an end to the absurdity now involved in it.

In the case of *Ipsen v. The East India House Estate Company* the facts were these:—The defendants having pulled down the old India House, which was immediately opposite to the plaintiff's house, proceeded to erect a new house, fifteen feet higher than the old. During the course of the erection, notices were served on the defendants not to interfere with the plaintiff's rights, and finally a bill was filed. The defendants, nevertheless, finished the house. The Lord Chancellor, reversing the decision of the Master of the Rolls, refused to enjoin the defendants to pull down any part of the obnoxious building; but directed an inquiry as to the amount of compensation to be paid by the defendants, as satisfaction for the damage done to the plaintiff by the obstruction to his lights. The judgment commences in these words:—“The Lord Chancellor said, that every one of these cases must depend upon its own peculiar circum-

stances. . . . The jurisdiction of the Court, so far as it was a preventive remedy, or a protection from further damage, was a jurisdiction exercised without any difficulty, and resting upon the clearest grounds. But there was superadded to it the remedy, by way of mandatory injunction, which was an order compelling the defendant to restore things to the condition in which they were before the plaintiff's complaint was made. The exercise of that power must be attended with the greatest possible caution. He (the Lord Chancellor) thought, without intending to lay down any rule, that it should be confined to cases where the injury done to the plaintiff could not be estimated and sufficiently compensated by pecuniary payment."

We understand his Lordship to mean, that if the building had not been erected, he would have granted an injunction to forbid the erection; but as it had been finished, he would not, under the circumstances, oblige the defendants to take it down. This would appear only reasonable if the plaintiff had lain by and allowed the building to go on; but in this case it appeared from the evidence, that notices had been given to the defendants that proceedings would be taken against them if they continued the work. The position laid down by the Lord Chancellor appears therefore, to amount to this—that whenever a man, wishing to obstruct his neighbour's lights, can succeed in running up the obnoxious structure before an injunction is actually obtained against him, then, in all cases where the injury done can be sufficiently compensated by money, he will be entitled to continue in his wrongful trespass on his neighbour's rights, on payment of a money compensation.

The observations of the Lord Chancellor appear to derive considerable support from the case of *The Attorney-General v. Nichol* (16 Ves. 338), which was an ordinary case of obstruction to the plaintiff's lights. Lord Eldon, in his judgment, expressly lays down that there are many cases in which the Court of Chancery will not interfere by injunction, although the value of the plaintiff's premises has been diminished, and an action on the case would accordingly be maintainable. He says, "The foundation of this jurisdiction, interfering by injunction, is that sort of material injury to the comfort of the existence of those who dwell in the neighbouring house, requiring the application of a power to prevent, as well as remedy, an evil for which damages would be given in an action in a court of law." This judgment has been cited with approval in the cases of *Sutton v. Lord Montford* (4 Sim. 559) and *Winstanley v. Lee* (2 Swanst. 333); also by Mr. Yool, in his treatise on Waste, Nuisance, and Trespass; in *Gale on Easements*; and in many other places.

It is, however, important to observe, that *The Attorney-General v. Nichol* and the other cases cited, were cases where injunctions were asked for upon interlocutory applications. *Johnson v. Wyatt* (9 Jur., N. S., part 1, p. 1353; 12 Weekly Rep. 234) was a motion for decree, but here the building had not been finished. We cite the following passage from the judgment of Lord Justice Turner:—"In my opinion the Court will not interfere by injunction, if the damages recoverable were trifling or inconsiderable; but as this is a case in which there has not been an unanimity among the judges of the Court, I will leave that point out of consideration." This dictum, however, hardly goes to the length of *Ismberg v. The East India House Company*. The Lord Justice speaks of the trifling amount of the damage done as being a reason for refusing the injunction; whereas the Lord Chancellor appears to be of opinion, that whatever the amount of damage may be, yet if it be of a nature which can be compensated by

money, the injunction should be refused. The case of *Jacomb v. Knight* (9 Jur., N. S., part 1, p. 529; 11 Weekly Rep. 812) seems to be open to the same observation. This was a case of a motion for decree, and also of a mandatory injunction. The decision turned in a great measure upon the question, whether a bill for an injunction could be sustained by a tenant from year to year under notice to quit. The Lord Justice Knight Bruce, after observing that the balance of inconvenience on the one side and on the other was a consideration of which the Court, in injunction cases, never lost sight, proceeded as follows:—"There is, in my opinion, no plain case rendering an injunction necessary, especially as the plaintiff can recover compensation in damages. As I said, the nuisance may be so much as to interfere with health and comfort, and to render it the duty of the Court to interfere. . . . I am of opinion that, considering the inconvenience on one side of granting the injunction, and the inconvenience on the other side of not granting it, the considerations in favour of refusing to act greatly preponderate. There may have been damage entitling the plaintiff to recover in an action, but upon the evidence as it stands before us, the damage is not serious—is not considerable—is not likely to be serious or considerable."

Whatever amount of support the Lord Chancellor's decision may derive from these authorities, it appears to be hardly consistent with the observations of Lord Kingsdown in *The Imperial Gas-light Company v. Broadbent* (7 H. L. C. 612), which are embodied in the marginal note to that case. Lord Kingsdown, in the course of his judgment, speaks as follows:—"The rule I take to be clearly this—if the plaintiff applies for an injunction to restrain the violation of a common-law right, and the existence of that right, or the fact of its violation, is denied, he must establish his right at law; but having done so, I apprehend that, unless there is something special in the case, he is entitled as of course to an injunction to prevent the recurrence of that violation." The present Lord Chancellor, however, lays down that in all cases in which the damage can be estimated in money, a mandatory injunction ought not to be granted. It appears to us that this is, at all events, when thus broadly stated, a new position, and is of sufficient importance to justify us in thus bringing it before the notice of our readers.

Imperial Parliament.

HOUSE OF LORDS.—Friday, March 4.

The Lord Chancellor brought in a bill to amend an act passed in the year 1860, authorising the appointment of an additional chief clerk in the court of the Master of the Rolls. The noble and learned lord stated, that the gentleman who was appointed in that year had ever since performed his duties zealously and laboriously. He had recently been appointed to a higher grade, and as he was named in the act of Parliament, and there was no provision made for appointing a successor, this bill was necessary to enable the vacancy to be filled up. That it was requisite that such a step should be taken would be obvious to their lordships when he stated, that of 41,300 appointments in chambers in the year 1862-63, 16,900 were disposed of by the Master of the Rolls.

The bill was read a first time.

Monday, March 7.

The Marquis of Westmeath introduced a bill to punish by whipping the offence of rape when more than one person was engaged in its commission.

HOUSE OF COMMONS.—Thursday, March 3.

Mr. Roebuck directed the attention of the Home Secretary to an extract from the report of the Inspector of Constabulary

in England. In his report, General Cartwright, the Inspector of Police in the Eastern Counties, Midland, and North Wales district, makes this statement:—

"During my inspection in the county of Lincoln, Captain Bicknell, the chief constable for that large and important county, brought under my notice a system which he had discovered, of private communication between individuals or societies and members of the force, which I cannot better explain than by entering the letter addressed from Captain Bicknell to the county paper upon the subject:—

"To the Editor of the *Mercury*.

"Chief Constable's Office, Lincoln, Aug. 19, 1863.

"Sir,—The police of this country are constantly receiving letters from private inquiry offices, seeking information as to the character, respectability, and money value of persons residing in the towns and villages, generally of small traders, but sometimes of clergy and professional men. Companies are formed for the professed object of conducting these inquiries, and the practice is becoming very prevalent. I think most persons are little aware of the system of spying that is going on, and that 'strictly confidential' communications may be passing concerning them which may be of serious injury to their prospects, and that their names may be inscribed at the offices in the 'register of persons deemed unworthy of credit.' The police of the counties and boroughs are largely applied to by these offices, and it is within my knowledge, that in some instances the information sought has been furnished, and remuneration received. Such matters, unless on criminal information, are, I conceive, beyond the province of the police; and it is to make known that I have prohibited any replies to such inquiries on the part of the constabulary of this county, and also to draw the attention of the police authorities generally to the subject, that I request the insertion of this letter in your widely circulated paper. I inclose you a specimen letter of inquiry, but not for publication.

"I am &c.,

"PHILIP BICKNELL,
Chief Constable of Lincolnshire."

Upon this General Cartwright makes these observations:—

"Considering this is a most important communication, I have made a point of inquiring whether this system has been generally in force, and I have to report, that in many counties and boroughs I find it to be of common practice. Feeling deeply how injurious such a system must be to the well-being of the force, I cannot too strongly impress upon you my firm belief that unless it is at once suppressed the support the force receives from the public will be greatly damaged, if not entirely withdrawn. According to the title of the act under which the force is established, it is stated to be for the more effectual prevention and detection of crime, suppression of vagrancy, and maintenance of good order. The duties here are so well defined that it must be clear to every one that any strictly confidential inquiries into private means and character between individuals or societies and police officers is one of the most dangerous transgressions of duty that can be imagined. The efficiency of the force depends upon its popularity, which, if removed, is fatal to its main support; as, according to its efficiency, it becomes popular, so according to its popularity it becomes efficient. In my circuit of inspection, wherever I have mentioned this subject to any of those in command of forces it has met with their immediate reprobation. This course of action may check the system referred to, but I consider it of such vital importance to the force, that I have thought it my duty to bring it under your immediate consideration."

Sir G. Grey:—No doubt the practice to which General Cartwright has called attention is a very objectionable one, and the employment of the police in certain parts of the country, not under the authority of their officers, in making these inquiries, is altogether foreign to the object for which the police force was established. As soon as my attention was called to this passage in General Cartwright's report, I directed a circular to be addressed to the chairmen of quarter sessions in counties, and to the chairmen of watch committees in boroughs possessing a separate police force, and to the police authorities in Scotland. This is the form addressed to the chairmen of watch committees:—

"Whitehall, Feb. 3.

"Sir,—I am directed by Secretary Sir George Grey to request that you will call the attention of the watch committee to the inclosed extract from the last report of Lieutenant-General Cartwright, one of her Majesty's Inspectors of Constabulary, respecting a system of private communication which appears to be in operation between individuals or societies and members of the constabulary force; and I am to request that inquiries may be made upon this subject with reference to the police of your borough, and that special instructions may be given to prevent a practice which is open to very serious objection.

"I am, Sir, your obedient servant,

"H. A. BRUCE.

"The Chairman of the Watch Committee."

I have received a great many letters in answer to this circular, and, although some replies are still wanting, I am happy to say that the general result shews that the practice exists in only a very few instances, and, attention having been called to the subject, and strict injunctions given against the practice, I hope that a continuance of it will now be effectually prevented.

The Bills of Exchange and Promissory Notes (Ireland) Bill was read a second time.

Friday, March 4.

Sir G. Grey moved the second reading of the Penal Servitude Acts Amendment Bill.

Mr. Adderley moved, as an amendment, that the bill be read a second time that day six months.

This was seconded by Mr. Beach, and, after a debate, in which Mr. G. Hardy, The O'Connor Don, Sir W. Miles, and Sir G. Grey took part, the amendment was withdrawn, and the bill read a second time.

Monday, March 7.

The Bills of Exchange and Promissory Notes (Ireland) Bill passed through committee.

Tuesday, March 8.

Mr. Childers gave notice, that in the committee on the Penal Servitude Acts Consolidation, he should move certain amendments bearing on the subject of transportation.

Colonel W. Patten, referring to what had fallen from the President of the Board of Trade last week on the subject of the fees of the Parliamentary Bar, said that this statement had attracted the attention of the parties interested in the subject; and he had received a communication from a leading member of the Parliamentary Bar, Mr. Hope Scott, in which it was stated that the sum to be paid for any counsel to appear before a private committee was no more than ten guineas. He, therefore, asked the President of the Board of Trade whether he still believed that the sum to be paid for counsel was fifteen guineas, or whether it was not, as stated by Mr. Hope Scott, ten guineas only.

Mr. M. Gibson said that the fact stated that any counsel would be permitted to take ten guineas only, was a considerable change and a great relief to the suitors. It was handsome on the part of the Parliamentary Bar to make that concession.

Mr. G. Chre moved for a select committee to inquire into the expediency and practicability of abolishing turnpike trusts.—Agreed to.

The Bills of Exchange and Promissory Notes (Ireland) Bill was read a third time, and passed.

Wednesday, March 9.

Mr. Neale gave notice, that in committee on the Penal Servitude Acts, he would move the omission of clause 2.

Mr. W. O. Gore moved the second reading of the Trepass (Ireland) Bill, which, after a few words from Sir Robert Peel, was read a second time.

Mr. H. Bruce moved the second reading of the Watching of Towns (Ireland) Bill.

After a debate, in which Sir Robert Peel, Lord Naas, Mr. Herbert, Sir F. Heygate, Mr. George, Colonel Dumas, Dr. Brady, Captain Archdall, Colonel Vandeleur, Major Gore, and Mr. Sullivan, and Sir H. Bruce took part, the bill was withdrawn.

Mr. W. Swart moved the second reading of the Metrical System of Weights and Measures Bill. He explained that its object was to make that system permissive.

Mr. Locke seconded the motion.
Mr. M. Gibson, Mr. Henley, Mr. Adderley, Mr. Hankey, Mr. Walter, Mr. J. B. Smith, Colonel Sykes, Mr. Buxton, Colonel Barttelot, and Mr. Baines having spoken, the House divided.

For the second reading..... 90
Against it 52
Majority —38

Mr. Adderley gave notice that on Friday next upon the motion that the Speaker do leave the chair, he should move the following resolution:—"That this House is of opinion that the system of discharge of prisoners from penal servitude on license without police supervision, shall no longer be continued."

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THE JURIST.

LONDON, MARCH 19, 1864.

PREVIOUS to the Reformation, in this, as in most, if not all, countries, where the religion of Rome prevailed, and religious orders were recognised, a person who, in the words of Littleton, "entered and professed in religion," as monk or nun, and thus took the vows of "obedience, voluntary poverty, and perpetual chastity," became civilly dead. The result of this civil death, as far as regards succession to property, was similar to that of natural death. If the monk was seised in fee, his heir succeeded to his lands, or if he were one of two joint tenants, the lands survived to the other. He might, moreover, have made his will, and his executors might have brought actions in respect of debts due to him "as if he were dead, indeed."

If, moreover, he made no executors when he entered into religion, then the Ordinary might commit the administration of his goods to others "as if he were dead, indeed." (Litt., sect. 200; Co. Litt. 132. a, 132. b.)

It followed, as a natural consequence of this doctrine, that monks or nuns could not, after their profession, take property of any kind, but that it devolved in course of law upon those who would have succeeded to it had the monks or nuns been actually instead of civilly dead.

Coke, in his Commentary upon Littleton, takes a distinction between profession in a foreign country and profession in England, laying it down that the common law takes no knowledge of profession in a foreign country, "because it wanted the trial;" whereas a profession in a house within the realm may be tried by certificate of the Ordinary. Whether there was any ground for the distinction is, at least, doubtful. (1 Domat, by Strahan, p. 26).

According to the old French law, the estates of persons who were professed religious did not go to the monastery, but to their heirs, or those to whom they were pleased to give them. And they could not dispose of them to the use of the monastery. (Ib.)

In those times there was a reality in the vow of poverty, and the notional death of the professed person was carried out fully into all its logical consequences.

Since the Reformation, however, it is generally understood, that a person does not become civilly dead by becoming a monk or nun; and of late years, as the laws against Roman Catholics have been relaxed, and monastic institutions are springing up over the land, questions have arisen which lead us to the conclusion that the old law of civil death was founded in good sense and sound policy. At present, monks or nuns, not being civilly dead, are able to acquire and hold property, and, consequently, are able to dispose of it, if the act by which the disposition is made is not liable to be set aside upon the ground of undue influence, either actually proved to have been exerted over them by their ecclesiastical superiors, or to be

presumed from the position in which they are placed, and the vows which they have taken.

It seems to be clear, that if a nun were to make a gift of her property to her convent, she or her representatives might have such deed set aside upon the ground of undue influence, the exercise of which the Court of Chancery, taking into consideration the vows she had taken, and the circumstances under which she was placed, would, according to the principles upon which it ordinarily acts, undoubtedly presume. (*Whyte v. Meade*, 2 Ir. Eq. Rep. 420). Can such a deed be enforced in equity upon the application of the nun herself?

This question was raised in the case of *Fulham v. McCarthy* (9 Ir. Eq. Rep. 620; 12 Jur., part 1, p. 758). On bill being filed by a nun and the superioresses of the convent, to whom she had assigned her share in a residue under a will, the Lord Chancellor of Ireland (the Right Hon. Maziere Brady) dismissed the bill with costs, but, it seems, directed an issue.

There was an appeal from the decision of the Lord Chancellor of Ireland, but the point as to the validity of the assignment was not actually decided, as the bill was dismissed on the ground of misjoinder. The decision, however, of the House of Lords shews, that in their opinion there was an important question, viz. as to the validity of the deed, to be tried between the parties who wrongly appeared as co-plaintiffs.

The Lord Chancellor of Ireland, however, in a very able judgment, put the question to be tried in a very forcible light; he likened the case of the gift obtained from the nun to the case of a gaoler putting his prisoner in a dungeon, and extracting a deed from him there, and then coming into court, having his victim still in his power, and saying, we want the property; the Court must give it to us, in the right of the deed; but his Lordship thought the Court would be a nuisance, if it were the medium of confirming such an instrument.

In the recent case of *In re Metcalfe's Will* (10 Jur. N. S., part 1, p. 224), this subject has been again discussed. There a Miss Thompson, formerly a member of the Church of England, joined the Church of Rome. Afterwards, in November, 1859, she became a professed nun in the Carmelite convent in Paris. In April, 1861, she took the black veil, and made the vows of *poverty, obedience, and chastity*. On the 28th June, 1862 (we presume, as a matter of course, in such cases), she executed a deed, by which she assigned all her real and personal estate, and all other, if any, the real or personal estate, of or to which she was then seised, possessed, or entitled in possession, reversion, remainder, or contingency, to Mr. Hope Scott and Mr. Serjt. Bellasis, in trust to sell, and out of the proceeds to pay their expenses and the incumbrances affecting the property, and to pay the surplus to the superior priest, for the time being, of the congregation of the Reverend Fathers of the Oratory of St. Philip Neri, of Brompton, to be applied by him in his absolute discretion, and subject to no control but that of his ecclesiastical superiors. The deed then contained a covenant, by which the assignor, Miss Thompson, covenanted to convey and assign to the same trustees, and for the

same purposes, *all* real and personal property which she might afterwards acquire, by gift, devise, descent, bequest, survivorship, or any other mode of acquisition whatsoever. The deed does not, from the report of the case, appear to have contained any power of revocation. The deed was duly enrolled.

Two months after the execution of the deed, Miss Thompson became entitled under a will to a sum of 334*l.* Consols, which the trustees paid into court.

A petition was then presented in the name of the nun, asking for the transfer of that sum to the trustees of the deed, Mr. Hope Scott and Mr. Serjeant Bellasis. Sir J. Romilly, M. R., in his very able and instructive judgment, comes to the following conclusions:—

First, that since the Reformation the law regards a professed nun, who has taken the vows, as a person not thereby legally disqualified from taking or holding property, or dealing with it in such manner as she may think fit.

Secondly, that in the case before the Court, the deed was in no respect binding upon her, and the covenant in it was one which could not be enforced either at law or in equity.

And, thirdly, the petitioner not having proceeded under the deed, his Honor said he should require the same proof, upon a petition by a nun, that he should if upon a petition by the assignee of a nun, viz. that the mode of dealing with her property was sanctioned and desired by the petitioner, unbiassed and unaffected by any vow of obedience which she might voluntarily have given, and unconstrained and uninfluenced by the position of duress in which she had placed herself. His Honor, therefore, directed the interest of the fund to be accumulated at compound interest, without making any further order on the petition, but with liberty to apply.

Upon appeal to the Lords Justices, his Honor's decision was reversed. (See 10 Jur., N. S., part 1, p. 287). The judgment of the Court was delivered by Lord Justice Knight Bruce, in which Lord Justice Turner, without any comment, concurred.

His Lordship's judgment appears to us to be open to some observations.

In the first place, he said, "that as the appellant and the trustees of the deed all appeared, and consented to the payment of the fund, either to her or them, it was of little consequence to which of them it should be paid; and the question of the validity of the deed was immaterial."

This remark seems to be scarcely accurate; for, assuming the deed to be valid (and we presume it would be treated as if it were so, until set aside), how could the trustees of the deed, by any consent of theirs, give up the property of their *cestui que trust* to the person who created the trust?

His Lordship, moreover, thought that the contention, that the appellant had by her profession become civilly dead, was, irrespectively of the circumstance that that profession was foreign, "*absolute nonsense*."

His Lordship differed from the Master of the Rolls with regard to the question of undue influence; he thought that even if the deed had been improperly ob-

tained from the nun, and ought to be disregarded, or even if she were under an influence which would direct her to make an unwise disposition of the property, the Court could not speculate upon her intentions; and that "to refuse to a person in her senses, and under no legal disability, the payment of a fund, to which she was absolutely entitled, *merely because she was likely to deal with it in a manner which the Court might think unwise*, would be to arrogate to a court of justice a power which, in his judgment, it did not possess."

These observations of his Lordship do not, in our opinion, dispose of the difficulties which surround the question, and which evidently pressed upon the Master of the Rolls; for, independently of any question as to any unwise manner in which the nun was likely to dispose of her property, there was nothing to shew that she knew of the petition being presented, or that even if she did know of it, having regard to the vows she had taken, she could be looked upon as a free agent in making the application to the Court.

It is to be regretted that the Lords Justices, in a question of such great importance, did not in any manner notice the cases upon the same subject in Ireland and in the House of Lords. Their decision, however, is in one respect deserving of consideration; it shews how, if it remains unreversed, conventional establishments may, with ease, and apparently without scandal, obtain either for themselves or for other purposes of the Church of Rome, the entire property of all who, as professed nuns, take the vows of obedience and poverty, the observance of which, at any rate, that church has so great an interest in enforcing.

If the Lords Justices have correctly laid down the law of England, in reversing the order of the Master of the Rolls (which we very much doubt), it certainly seems but right that the Legislature, which allows the existence in this country of such institutions as nunneries, should afford to nuns and their relatives the same protection, so far as their property is concerned, as now exists in most Roman Catholic countries, and which before the Reformation the fiction of civil death afforded to them in this.

Correspondence.

SUFFIELD v. BROWN AND ISENBERG v. THE EAST INDIA HOUSE ESTATE COMPANY.

TO THE EDITOR OF "THE JURIST."

SIR,—Allow me to suggest, that neither your own comments on the case of *Suffield v. Brown*, nor those of your correspondent, C. E. F. N., give sufficient prominence to what is most significant and remarkable in the Lord Chancellor's judgment—a judgment which filled with astonishment those who were more familiar with the law of easements than with his Lordship's judicial habits. The following extracts, from the very learned and accurate Treatise on Easements, by Mr. Gale, and from some of the leading cases, will shew what, when that judgment was delivered, was, and still is, settled law:—

Speaking of easements, commonly called of necessity, which, he observes, it is quite clear are equally implied in favour of both parties, Mr. Gale says:—"It is true that, strictly speaking, a man cannot sub-

ject one part of his property to another by an easement, for no man can have an easement in his own property, but he obtains the same object by the exercise of another right—the general right of property; but he has not the less thereby permanently altered the quality of the two parts of his heritage, and if, after the annexation of peculiar qualities, he alien one part of his heritage, it seems but reasonable, if the alterations thus made are palpable and manifest, and in their nature permanent changes, in the disposition of the property, so that one part thereby becomes dependant upon another, that a purchaser takes the land, burthened or benefited, as the case may be, by the qualities which the previous owner had undoubtedly the right to attach to it. This reasoning applies to those easements only which are attended by some alteration which is in its nature obvious and permanent, or, in technical language, to those easements only which are apparent and continuous, understanding by apparent signs not only those which must necessarily be seen, but those may be seen or known on a careful inspection by a person ordinarily conversant with the subject." (Gale on Easements, 3rd ed., by W. H. Willea, p. 85).

Accordingly, in *Pyer v. Carter* (1 H. & Norm. 922), the doctrine was applied to a drain, which might have been discovered upon such examination of the property as is usually made by a careful purchaser; and the Court (not in any way referring to or relying on the French rule as to a destination du père de famille), said—"It seems in accordance with reason, when the owner of two or more adjoining houses sells and conveys one of the houses to a purchaser, that such house in his hands should be entitled to the benefit of all the drains from his house, and subject to all the drains then necessarily used for the enjoyment of the adjoining houses, and that, without express reservation or grant, inasmuch as he purchases the house such as it is. If that were not so, the inconveniences and nuisances in towns would be very great." The Court then shewed, by reference to the cases of *Nicholas v. Chamberlayne* (Cro. Jac. 121); *Shury v. Pigott* (Poph. 166); and *Coppy v. J. de B.* (11 Hen. 7, 25, pl. 6), that this is old and well-settled law. The distinction for this purpose between discontinuous easements, such as a right of way not connected with the structure of the tenement, or the right claimed in the case before the Lord Chancellor, and continuous easements, such as drains, lights, &c., was recognised in *Worthington v. Gimson* (29 L. J., Q. B., 116). Even a right of way, if necessary for the enjoyment of either of the severed tenements, according to its construction at the time of severance, will be reserved by implication to the grantor, or pass to the grantee, as the case may be. "The lease did not grant the right in terms, and the only way in which it could grant it was, that the condition of the premises, at the time when the lease was granted, shewed that it was intended that the right of way should be exercised upon the principle of law I have adverted to—that by the devolution of the tenements originally held in one ownership, a right of way to a particular door or gate would, as an apparent and continuous easement, pass to the owners and occupiers of both of them." (Per Bramwell, B., *Glave v. Harding*, 27 L. J., Exch., 292). So, the purchaser of land adjoining to a house retained by the vendor cannot block up any of the lights in the house, although they are recent. (*Compton v. Richards*, 1 Price, 27, and *Rivière v. Bower*, 1 Ry. & M. 24). See *Hinchliffe v. Kinnoul* (5 Bing. N. C. 22), and also the cases cited in the editorial article of Feb. 27.

Such being the settled law, as old as the Year Books, and as recent in application as the last year or two, how does the Lord Chancellor refer to it?—the claim

before him, be it remembered, being for a discontinuous non-apparent easement, not in any way affecting or indicated by the structure of the tenement in respect of which it was claimed. His Lordship, properly enough, decides that the claim cannot be sustained; and, overruling the decision of the Master of the Rolls, characterises the doctrine involved in it as "serious and alarming." "But," he adds, "I believe it to be of very recent introduction." It had never been introduced, or existed at all, save in the decision of the Master of the Rolls. And then he proceeds to ridicule the learned and perfectly accurate exposition of the law contained in Mr. Gale's book, and describes the judgment in *Pyer v. Carter* as fallacious and erroneous; and says, "I cannot look upon the case as rightly decided, and must wholly refuse to accept it as any authority." By which his Lordship evidently meant, that the case was in point, but that he would not follow it—the fact being, that the case had nothing to do with the question before him.

Now, I need not say a word more in defence of *Pyer v. Carter*; the principle involved in it is too deeply founded in convenience and common sense, and too well settled to be shaken by an obiter dictum of Lord Westbury. But what is to be thought or said of a judge who, in his eagerness for notoriety, will thus rashly and arrogantly set his hasty misconceptions above the well-considered decisions of able judges and the deliberate conclusions of cautious and learned text-writers?

The case of *Izenberg v. The East India House Estate Company* (10 Jur., N. S., part 1, p. 221), however, contains doctrine which may well be described as "serious and alarming"—at least, to all but the overworked members of committees on private bills. It amounts to this—that any one may, without the aid of the Legislature, force his neighbour to sell his lights or other easements, if he can only manage to anticipate the interference of a court of equity, by running up against them a building of greater value than the damage occasioned by it! G. S.

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No law library is complete without a law dictionary or law lexicon. To the practitioner, it is always useful to have at hand a book where in a small compass he can find an explanation of terms of infrequent occurrence, or obtain a reference to statutes on most subjects, or to books wherein particular subjects are treated of at full length.

To the student, it is almost indispensable in his daily reading and study that he should have beside him a book which will give him in clear and concise language the meaning of terms of art, which, in some treatises are but imperfectly explained, or are not explained at all, in consequence of authors assuming a knowledge on the part of their readers which does not exist.

Mr. Wharton's Law Lexicon, the *third* edition of which has just been published, and in the preparation of which he has been assisted by G. H. Cooper, Esq., of the Inner Temple, and R. Searle, Esq., of the Middle Temple, can, in our opinion, be highly recommended both to practitioners and students, as containing a mass of information upon law and legal terminology, and upon a great variety of subjects connected more or less intimately with the vast and still increasing field of jurisprudence.

There is also a large collection of legal maxims in Mr. Wharton's book, sometimes accompanied by illustrations, and always by translations for the benefit of those who are not adepts in what are termed the learned languages.

Among the terms and phrases are to be found not only those which appear in our books of black letter law, but also those which have been invented to supply the exigencies of modern developments and those which relate to civil, mercantile, and international jurisprudence, and to the Hindoo and Mussulman juridical systems, as administered in our Indian empire.

Several useful additions have been made to the present edition, the text has been carefully revised, and the alterations made in the law since the second edition, have been carefully noted.

Mr. Wharton's Lexicon, in fine, is not only of great utility to the practitioner and student in the legal profession, but it will be a most valuable addition to the library of the general reader.

COMMISSIONER TO ADMINISTER OATHS IN CHANCERY.—The Lord Chancellor has appointed Harry Tilly, Gent., of Falmouth, Cornwall, to be a Commissioner to administer oaths in the High Court of Chancery in England.

The Right Hon. Sir William Erle, Knt., Lord Chief Justice of her Majesty's Court of Common Pleas at Westminster, has appointed John Peed, Gent., of Whittlesey, in the county of Cambridge, to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women, in and for the county of Cambridge.

GENERAL EXAMINATION.—TRINITY TERM, 1864.

THE Council of Legal Education have approved of the following rules for the public examination of the students.

The attention of the students is requested to the following rules of the Inns of Court:—

"As an inducement to students to propose themselves for such examination, studentships and exhibitions shall be founded of fifty guineas per annum each, and twenty-five guineas per annum each respectively, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each general examination; and one such exhibition shall be conferred on the student who obtains the second position; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations; and the Inns of Court to which such students as aforesaid belong, may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar. Provided that the examiners shall not be obliged to confer or grant any studentship, exhibition, or certificate, unless they shall be of opinion that the examination of the students has been such as entitles them thereto."

"At every call to the Bar those students who have passed a general examination, and either obtained a studentship, an exhibition at such examination, or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day."

RULES FOR THE PUBLIC EXAMINATION OF CANDIDATES FOR HONOURS, OR CERTIFICATES ENTITLING STUDENTS TO BE CALLED TO THE BAR.

An examination will be held in next Trinity Term, to which a student of any of the Inns of Court who is desirous of becoming a candidate for a studentship, an exhibition, or honours, or of obtaining a certificate of fitness for being called to the Bar, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name at the treasurer's office of the Inn of Court to which he belongs on or before Thursday, the 12th day of May next; and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction, or whether he is merely desirous of obtaining a certificate preliminary to a call to the Bar.

The examination will commence on Thursday, the 19th day of May next, and will be continued on the Friday and Saturday following.

It will take place in the Hall of Lincoln's Inn; and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order:—

Thursday morning, the 19th May, at half-past nine, on Constitutional Law and Legal History; in the afternoon, at half-past one, on Equity.

Friday morning, the 20th May, at half-past nine, on Common Law; in the afternoon, at half-past one, on the Law of Real Property, &c.

Saturday morning, the 21st May, at half-past nine, on Jurisprudence and the Civil Law; in the afternoon, at half-past one, a paper will be given to the students including ques-

tions bearing upon all the foregoing subjects of examination.

The oral examination will be conducted in the same order, during the same hours, and on the same subjects, as those already marked out for the examination by printed questions, except that on Saturday afternoon there will be no oral examination.

The oral examination of each student will be conducted apart from the other students; and the character of that examination will vary, according as the student is a candidate for honours or a studentship, or desires simply to obtain a certificate.

The oral examination and printed questions will be founded on the books below mentioned, regard being had, however, to the particular object with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the Bar, the examiners will principally have regard to the general knowledge of law and jurisprudence which he has displayed.

A student may present himself at any number of examinations until he shall have obtained a certificate.

Any student who shall obtain a certificate may present himself a second time for examination as a candidate for the studentship or exhibition, but only at the general examination immediately succeeding that at which he shall have obtained such certificate; provided, that if any student so presenting himself shall not succeed in obtaining the studentship or exhibition, his name shall not appear in the list.

Students who have kept more than eleven terms shall not be admitted to an examination for the studentship or the exhibition.

THE READER ON CONSTITUTIONAL LAW and LEGAL HISTORY will expect the candidates for honours to be well acquainted with the origin and progress of our Laws and Constitution, as explained in chap. 8, part 3, of Hallam's History of the Middle Ages.

He will expect them to be well acquainted with the reign of Richard II, and with the chapters in Hallam's Constitutional History which give an account of the reigns from the accession of Henry VII to the death of Anne; with the State Trials of persons eminent in our history, or remarkable for other reasons, from the accession of James I to the year 1760; with the History of the Law of Treason and the Law of Libel.

All candidates will be required to know the principal events in English History from the Conquest to the year 1782; to have an accurate knowledge of the reigns of the Stuart Kings, of the Trials of Sidney, Russell, Colledge, and Bushel, of Magna Charta, the Petition of Right, the Bill of Rights, the Act of Settlement, and the Toleration Act.

THE READER ON EQUITY proposes to examine in the following books:—

1. Haynes's Outlines of Equity; Smith's Manual of Equity Jurisprudence; Hunter's Elementary View of the Proceedings in a Suit in Equity, part 1.

2. The Cases and Notes contained in the 1st volume of White & Tudor's Leading Cases; the Act to further amend the Law of Property and to relieve Trustees, 22 & 23 Vict. c. 35; the Act to further amend the Law of Property, 23 & 24 Vict. c. 38; the Act to give to Trustees, Mortgagees, and others, certain Powers now commonly inserted in Settlements, Mortgages, and Wills, 23 & 24 Vict. c. 145; the Act to regulate the Procedure in the High Court of Chancery and the Court of Chancery of the County Palatine of Lancaster, 25 & 26 Vict. c. 42; the General Orders of the Court of Chancery of the 1st February, 1861, and of the 5th February, 1861 (7 Jur., N. S., part 2, p. 58);

Mitford on Pleadings in the Court of Chancery—Introduction, c. 1, ss. 1, 2; c. 1, s. 3 (the first six pages); c. 2, s. 1; c. 2, s. 2, part 1 (the first three pages); c. 2, s. 2, part 2 (the first two pages); c. 2, s. 2, part 3; c. 3.

Candidates for certificates of having passed a satisfactory examination will be expected to be well acquainted with the books mentioned in the first of the above classes.

Candidates for a studentship or honours will be examined in the books mentioned in the two classes.

THE READER ON THE LAW OF REAL PROPERTY, &c., proposes to examine in the following books and subjects:—

1. Joshua Williams on the Law of Real Property, 6th ed.

2. The Law affecting Dispositions to Charitable Uses; *Corbyn v. French* (4 Ves. 418), and the notes to that case; Tudor's Leading Cases in Conveyancing, pp. 456-506, 2nd ed.

3. The Statutes relating to Wills (1 Vict. c. 26; 15 & 16 Vict. c. 24; 24 & 25 Vict. c. 114), and the notes to those statutes; Hayes & Jarman's Concise Wills, by Eastwood, pp. 1-76, 6th ed.

4. Sugden on Powers, c. 1, s. 1, pp. 1-24, 8th ed.

5. The Doctrine of Conversion, and the Doctrine of Election; Josiah William Smith's Real and Personal Property, pp. 1051-1065, 2nd ed.

Candidates for the studentship or honours will be examined in all the foregoing books and subjects; candidates for a certificate in those under heads 1, 2, and 3.

THE READER ON JURISPRUDENCE, the CIVIL LAW, and INTERNATIONAL LAW proposes to examine in the following books and subjects:—

1. Justinian's Institutes, book 2, with the Notes of Ortolan or Sandars.

2. Mackeldeii—Systema Juris Romani hodie Usitati—Pars Specialis, lib. 3, Jus Familiare, § 505 to § 600 (ed. Lips. 1847).

3. Code Napoleon—Du Mariage, art. 144-228; De la Paternité et de la Filiation, art. 312-342; and the remaining titles of the first book of the Code Napoleon, comprising art. 342 to art. 515.

4. Wheaton's Elements of International Law (ed. 1863); part 4, c. 2, Rights of War as between Neutrals.

5. Maine's Ancient Law, c. 5; Primitive Society and Ancient Law.

Candidates for honours will be examined in all the above subjects; but candidates for a pass certificate will be examined in 1, 4, and 5 only.

THE READER ON COMMON LAW proposes to examine in the following books and subjects:—

Candidates for a pass certificate will be examined in—

1. The ordinary Steps and Course of Pleading in an Action.

2. The Law of Contracts, as set forth in Smith's Lectures on Contracts (last ed.), Lectures 1-5 inclusive.

3. Stephen's Commentaries (5th ed.), book 5, cc. 7 and 8.—"Of Injuries cognisable in the Common-law Courts."

4. Paley on Convictions (4th ed.), part 1, c. 2.—"Proceedings before Justices preliminary to Conviction."

Candidates for the studentship or honours will be examined in 1, 2, and 4, supra, and also in—

5. The under-mentioned cases on Mercantile Law and the Law of Contracts, from Smith's Leading Cases, vol. 1, with the notes thereto:—*Lampligh v.*

Brathwaite; Master v. Miller; Miller v. Race; Mitchell v. Reynolds; and Waugh v. Carver.

6. Torts to the Person and Reputation, and to Property. This may be read from Broom's Commentaries (2nd ed.), book 3, cc. 2, 3; or from Selwyn's Nisi Prius (12th ed.), under the appropriate heads.

7. The following portions of the Criminal Law Acts (edited by Mr. Greaves), with the notes thereto:—24 & 25 Vict. c. 100, ss. 1-10 inclusive; 24 & 25 Vict. c. 96, ss. 2-9 inclusive, and ss. 67, 68, 88, and 89.

8. Taylor on Evidence (last ed.), part 3, cc. 1-3 inclusive.—“Instruments of Evidence.”

By order of the Council,

WESTBURY, C., Chairman.

Council Chamber, Lincoln's Inn,
March 8, 1864.

PROSPECTUS OF THE LECTURES

To be delivered during the ensuing Trinity Educational Term, by the several Readers appointed by the Inns of Court.

CONSTITUTIONAL LAW AND LEGAL HISTORY.

The Reader will trace the History of our Constitution from the reign of Elizabeth down to the last period which the time allotted to the Course of Lectures will allow him to reach.

He will dwell on the Legal History of each reign, as recorded in the Statute-book, the volumes of Reports, and the State Trials.

In his Private Classes he will pursue the same plan from the reign of Henry VIII downwards.

The books to which he will chiefly refer are—Rapin's History—Blackstone's Commentaries, edition by Kerr—Hallam's Constitutional History—Brodie's History—Burnet's Works—Lord Clarendon's Works—May's History—Memoirs and State Papers of the Period—State Trials—Coke's Reports and Institutes—Somers's Tracts—Lord St. Leonards' Preface to Gilbert on Uses—Millar's History of the English Government and Constitution—Milton's Prose Works—Bacon's Tracts.

EQUITY.

The Reader on Equity proposes to deliver, during the ensuing Educational Term, Two Courses of Public Lectures (there being six Lectures in each Course), on the following subjects:—

Elementary Course.

1. On the Origin and Limits of the Jurisdiction exercised by the Court of Chancery in Cases of Actual Fraud.

2. Constructive Frauds.

3. On Relief in Cases of Accident.

4. On Equitable Interference for the Prevention and Remedy of Waste.

Advanced Course.

1. On Equitable Conversion.

2. On the Equitable Presumption arising from a Step taken towards Performance of an Agreement.

3. On the Equitable Consequences of the Substantial Performance of an Agreement.

4. On the Equitable Doctrine of Satisfaction.

5. On the Implied Substitution of One Gift for Another.

In the Elementary Private Class, the subjects discussed will be—The Jurisdiction of Equity to compel specific Performance of Agreements—The Admissibility of Parol Evidence to establish an Agreement, or vary the Effect of a Written Agreement—The Principles of Equity Pleading.

In the Advanced Private Class, the Lectures will

comprehend—Suits for the Administration of Assets—Origin of the Distinction between Legal and Equitable Assets—The Distribution of Assets—Conclusion of Course on Pleading and Evidence in Suits in Equity.

THE LAW OF REAL PROPERTY.

The Reader on the Law of Real Property, &c. proposes to deliver, in the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course), on the following subjects:—

Elementary Course.

The Effect of the Stat. 8 & 9 Vict. c. 106, and the subsequent Statutes, known as Lord St. Leonards and Lord Cranworth's Acts, upon the Law of Real Property.

Advanced Course.

The Doctrine of Notice, as between Vendor and Purchaser.

In his Private Classes, the Reader on the Law of Real Property will, with his Elementary Class, continue his Course of Real Property Law, using the work of Mr. Joshua Williams as a Text-book; and with the Advanced Class, the Reader will examine and comment upon Cases selected from Mr. Tudor's Leading Cases in Conveyancing.

JURISPRUDENCE, THE CIVIL LAW, AND INTERNATIONAL LAW.

The Reader on Jurisprudence, the Civil Law, and International Law proposes, in the ensuing Educational Term, to deliver Six Public Lectures on the following subjects:—

1. Consolidation and Codification, and the Methods adopted in the Construction of the Codes of Justinian and Napoleon.

2. The Roman Law relating to Husband and Wife compared with the English and French Law upon the same Subject.

3. The Power of the Father over the Person and Property of his Child, by the Roman, French, and English Systems of Law respectively.

4. The History and Present State of the Law of Blockade.

In his Private Class, the Reader proposes to continue the Course of Roman Civil Law, using Sandars's Edition of Justinian's Institutes, and the *Systema Juris Romani* of Mackeldey as Text-books.

The Reader in his Private Class will also discuss points of International Law, relating to the Rights and Obligations of Neutrals, using the work of Wheaton as the Text-book, and referring to the works of the principal modern Jurists, the decisions of the Admiralty and Prize Courts of England and America, the Debates in Parliament, and State Papers relating to the cases under discussion.

COMMON LAW.

The Reader on Common Law proposes to deliver, during the ensuing Educational Term, Two Courses of Six Public Lectures each, upon the following Subjects:—

Elementary Course.

1. The Actions of Trover, Trespass, and Case, with the Pleadings therein, and the Evidence necessary to support them.

2. Proceedings before Justices of the Peace preliminary to Summary Jurisdiction or to Committal for Trial.

3. Offences against the Person and against Property of ordinary occurrence, with the Proofs requisite for Conviction.

Advanced Course.

1. The Relation of Tort to Contract and to Crime.
2. The Ingredients in a Right of Action Ex Delicto, as shewn by analysing recent Cases, and by reference to the Evidence adducible in Actions Ex Delicto.
3. The Nature of, and Ingredients in, an Indictable Offence.
4. Changes effected in our Criminal Law by the Consolidation and Amendment Acts of 24 & 25 Vict.

With his Private Classes, the Reader will examine in detail the various subjects above specified, illustrating them by reference to the Reports, and using as Text-Books, with the Elementary Class—Selwyn's *Nisi Prius*, Paley on Conviction, and Broom's Commentaries; with the Advanced Class—Selwyn's *Nisi Prius*, 12th edition (by Power); Arch. Crim. Pleading, 15th edition; and Mr. Greave's edition of the Criminal Law Acts.

EXAMINATION ON THE SUBJECTS OF LECTURES AND CLASSES.

The Examinations for Exhibitions on the Subjects of Lectures and Classes delivered in Hilary and Trinity Terms, 1864, will commence on Monday, the 4th July, at Lincoln's Inn Hall.

Students who propose offering themselves for Examination must enter their Names on or before Wednesday, the 1st June next, at the Steward's Office, Lincoln's Inn; and a Reader's Certificate of having duly attended the Lectures and Classes, on the Subjects in which a Student offers himself for Examination, must be sent to the Council of Legal Education, at Lincoln's Inn, on or before Monday, the 20th June.

Students, having duly attended the Lectures and Classes of one or more of the Readers, are qualified to enter for Examination on such Subjects, but they are not allowed to enter for the Elementary and Advanced Examination on the same Subject, and provided that the Terms they have kept do not exceed the limits prescribed by clause 59 of the Consolidated Regulations of the Inns of Court.

By order of the Council,
(Signed) WESTBURY, C., Chairman.
Council Chamber, Lincoln's Inn,
March 8, 1864.

Imperial Parliament.

HOUSE OF LORDS.—Friday, March 11.

On the motion of Lord *Malmesbury*, the Leases and Sales of Settled Estates Act Amendment Bill was read a first time. The Turnpike Roads Bill was read a second time.

Monday, March 14.

The Inclosure Bill was read a second time.

Tuesday, March 15.

The Lord Chancellor said that, as the Insane Prisoners' Bill had been the subject of a good deal of discussion, the Government thought the best mode of dealing with it in that House was to refer it to a select committee.

The bill was then ordered to be referred to a select committee.

Wednesday, March 16.

The Inclosure Bill was read a third time and passed.

HOUSE OF COMMONS.—Thursday, March 10.

Mr. A. Mills asked the First Commissioner of Works whether it was intended to introduce any measure during the present session for the concentration of the courts of justice; and whether his attention had been called to the serious depreciation of property on the site recommended by the Commis-

sioners of 1858, in consequence of the uncertainty which had prevailed during the last three years as to the intentions of the Government on this subject.

Mr. Cowper said he trusted he should be able to give a full explanation of the whole matter in a short time.

Mr. H. Seymour asked the Secretary of State for the Home Department if it was the intention of her Majesty's Government, during the present session, to introduce measures for the reform of the Ecclesiastical Courts and Registries in England, which were promised last session. Bills had been promised last year, but week after week had passed without any bills being introduced, and it was said that there were great difficulties in the way, in consequence of the impossibility of getting the prelates to agree. If they waited for that, they would have to wait a long time, and he hoped the Government would introduce measures at once on their own responsibility, to remedy the evils which had long ago been proved to exist.

Sir G. Grey said he had not given any actual promise on the subject last session, but he had said that bills were in preparation, and, indeed, were shortly afterwards prepared. He quite agreed that it would be wrong of the Government to abstain from bringing in a bill until all the prelates were agreed, but last year the Lord Chancellor had a meeting, at which several of the prelates were present, to endeavour to ascertain what amount of support the Clergy Discipline Bill was likely to obtain, and he was satisfied then that there would be great difficulty in passing the bill which he had then prepared; nor did he entertain any sanguine hope that he should be able to pass a bill this year. With regard to the Courts and Registries, about which there was not the same difference of opinion, he had communicated with the Lord Chancellor, and, without giving any positive promise, he might say that the Government hoped to be able to introduce bills this session.

Monday, March 14.

Mr. Doulton gave notice, that after Easter he would call attention to the practice of exercising the Royal prerogative of mercy, and move a resolution, that the advice tendered to the Crown, in reference to a remission of the capital punishment, should be based on a solemn inquiry rather than upon individual responsibility.

In reply to Sir J. Hay, Sir G. Grey said that the papers on the subject of the West Riding assize had already been laid on the table.

Sir S. Northcote asked the Secretary of State for the Home Department whether it was the case, that a notice was put up in every convict prison to the effect, that convicts under sentences for life might be eligible to have their cases considered, with a view to a remission of their sentences, after a period of from eight to twelve years; whether persons who, having been sentenced to death, had had that sentence commuted into a sentence of transportation or penal servitude for life, were held to be entitled to the same consideration as convicts originally sentenced to punishment for life; and whether he would have any objection to lay upon the table a return of the cases in which convicts whose sentences had been so commuted had subsequently been liberated.

Sir G. Grey said, that no notice such as that to which the honourable gentleman referred in the first part of his question was now put up in the convict prisons. The notice now used was merely an explanation that all convicts under long sentences were exempted from the general rules as to remission. Each case was to be considered on its own merits, and no time was fixed when a convict would be entitled to claim remission. The practice under the old system had probably led the honourable baronet into a misapprehension as to what was now done. There was a rule that no convict under a long sentence should be sent abroad until he had undergone eight years of his sentence in this country. As to the second question, it was very difficult to reply to it within the limits of an ordinary answer, and he hoped he might have an opportunity of explaining the matter more fully on some other occasion. He could only say briefly, that no difference was made in the regulations between the two classes of convicts referred to—those who, having been sentenced to death, had had that sentence commuted to penal servitude for life, and those on whom the latter sentence had been passed in the first instance. Practically, however, a distinction was made between them. As to the return asked for, there would be

no objection to granting it if it were limited as to time; and if the honourable baronet would communicate with him privately, that could be arranged.

Tuesday, March 15.

Mr. W. Ewart gave notice, that in this month he would submit a motion to the House for the repeal of the punishment of death.

Leave was given to Mr. Baines to bring in a bill to extend the franchise in boroughs, by reducing the qualification from 10*l.* to 8*l.*

Leave was given to Mr. Agar Ellis to bring in a bill to amend the laws which relate to the registration of Parliamentary voters in counties in Ireland.

Wednesday, March 16.

Mr. Hadfield, in moving the second reading of the Judgment, &c., Law Amendment Bill, stated that its object was to give additional facilities to the owners of freehold property in transferring the same.

Sir G. Grey did not object to the second reading, but he hoped the bill would be referred to a select committee.

After a few words from Mr. Scully, the bill was read a second time.

Mr. Hunt moved the second reading of the Election Petitions Bill.

Sir G. Grey said a bill similar to this had been introduced last year, and referred to a select committee. The bill, however, as now introduced, was considerably different from the shape in which it emerged from that committee, and its details would require great consideration. He should, however, not oppose the second reading.

Sir F. Goldsmid objected to the great principle of the bill—that which compelled a petitioner in all cases to proceed with his petition—and intimated that he would move the rejection of the bill on going into committee.

After some remarks from Mr. Collins, the bill was read a second time.

EQUITY AND LAW LIFE ASSURANCE SOCIETY.—

This society held its annual general meeting on Thursday, the 25th February, at the society's house, No. 18, Lincoln's-inn-fields. George Lake Russell, Esq., in the chair. The report of the directors was read, from which it appears that the past year, the nineteenth of the society's existence, has been an unusually prosperous one; and has been marked by a greater progress in various respects than it has hitherto fallen to the lot of the directors to report. In the course of the year 151 policies were issued, under which were insured capital sums of 238,350*l.*, and one reversionary annuity of 225*l.* The premiums received in respect of these policies amounted to 9099*l.* 16*s.* 9*d.*; but it should be mentioned that in this sum is included a larger amount than usual of single premiums, viz. 1951*l.* 10*s.* 5*d.* Both the sum insured by the new policies and the premiums received thereon are considerably in excess of those of any previous year. The total income of the year was 78,595*l.* 6*s.* 7*d.*, and the outgoings of every description amounted to 32,730*l.* 17*s.* The difference, 45,864*l.* 9*s.* 7*d.* (or nearly 58*l.* per cent. of the total income), was added to the assets, which amounted on the 31st December to 396,644*l.* 16*s.* The increase of the assets in the last four years has been 140,761*l.* 5*s.* 2*d.* The society continues to experience the same remarkable immunity from heavy claims as has been noticed in former reports. Ten deaths have occurred among the lives insured, and claims to the amount of 11,547*l.* 10*s.* have arisen in consequence under twenty-six policies. Six only of these policies, insuring 7800*l.*, were effected on the participating scale of premiums, and the bonuses attaching to them amount to 537*l.* 10*s.* The remaining twenty policies, insuring 3210*l.*, were not entitled to bonus. The average rate of interest realised on the investments still continues to increase. The interest received in the course of last year was

15,267*l.* 1*s.* 9*d.*, being at the rate of 4*l.* 16*s.* per 100*l.* on the assets at the beginning of the year, exclusive of reversions purchased. A profit has also accrued by the falling in of two reversions, which profit will appear in the statement of accounts for 1864. The number of policies in force on the 31st December last was 1650, insuring the sum of 1,996,623*l.* The following are the directors who retire by rotation:—Mr. Hughes, Mr. Bristowe, Mr. Potter, and Mr. Armstrong. The directors regret to have to announce that a vacancy has also occurred through the death of Mr. Lucas, a gentleman who was connected with the society from its commencement. The retiring auditors are Mr. Boodle for the proprietors, and Mr. Bailey for the assured. In conclusion, the directors have to remind the proprietors that a declaration of profits will take place after the close of the current year; and would urge them to use their endeavours to maintain the high position which the society has attained, and to render the closing year of the current quinquennial period still more prosperous than the year now under review. The directors confidently claim the support of the proprietors and the public for the society, on the grounds of the liberality and fairness of its conditions, the complete security it offers to the assured, and above all, the very large bonuses attaching to its policies. The moderate amount of the expenses, which are now under 5*l.* per cent. of the income, and bear each year a less ratio to it—the high rate of interest realised on the investments—and the very favourable mortality experienced over a long series of years, leave no room to doubt that the future profits of the society will be at least as large, in proportion to the increasing income, as those declared on former occasions. It will further be remembered that the assured are entitled to nine-tenths of the whole of the profits; but a large proportion of the business of the society consists of policies which do not participate in the profits, and much more than one-tenth of the whole profits is derived from such policies; so that the assured in this society have greater advantages than if they formed a mutual insurance company, dividing among themselves the whole of the profits arising from their own policies.

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- VI.—NOTICES of COMPULSORY PROCEEDINGS. (100 sheets in each book, price 6*s.* bound).
- VII.—NOTICE to OCCUPIERS FOULING DRAINS. (200 sheets in each book, price 10*s.* 6*d.* bound).
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THE JURIST.

LONDON, MARCH 26, 1864.

IN last Michaelmas Term an important step in the reform of legal education was taken by the "Consolidated Regulations of the several Societies of Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn (hereinafter described as the four Inns of Court), as to the admission of students, the mode of keeping terms, the calling of students to the Bar, the granting certificates to practise under the Bar, and legal education." This document, which will be found at length, ante, p. 16, consists of fifty regulations, which are distributed under the following heads:—

Admission of Students.
Keeping Terms.
Calling to the Bar.
Council of Legal Education.
Educational Terms.
Readers.
Emoluments of Readers.
Fees payable by Students.
Examinations on Subjects of Lectures.
General Examinations.
Common Fund.
Commencement.

The above regulations were sanctioned and confirmed by orders of the several Societies, as under-mentioned:—

Middle Temple, 18th December, 1863.
Gray's Inn, 18th December, 1863.
Lincoln's Inn, 22nd December, 1863.
Inner Temple, 22nd December, 1863.

Many of these regulations are re-enactments of others previously in force; but some of them are new; and we propose to direct attention to the most remarkable of the latter, namely, those which relate to the examination of students previous to their admission.

On this subject the regulations provide as follows:—

"1. Every person who shall have passed a public examination at any of the Universities within the British dominions, shall be entitled to be admitted as a student to any Inn of Court, for the purpose of being called to the Bar, or of practising under the Bar, without passing a preliminary examination, &c.

"2. Every other person applying to be admitted as a student to any Inn of Court, for the purpose of being called to the Bar, or of practising under the Bar, shall, before such admission, have satisfactorily passed an examination in the following subjects, viz:—

(a). The English and Latin Languages.

(b). English History.

"3. Such examination shall be conducted by a joint board, to be appointed by the four Inns of Court.

"4. For constituting such board, each Inn shall appoint six examiners.

"5. The examiners shall attend according to a rota to be fixed by themselves, and that two shall be a quorum.

"6. Meetings of the examiners of students, applying for admission at any of the four Inns of Court, shall be held at least once in every week between the 20th October and the 10th August in each year."

In pursuance of these regulations meetings were held by the examiners appointed under them, who made, among others, the following additional rules for their own guidance:—

"7. Two examiners shall conduct each examination, of whom one shall always be present, and both shall be present at any *viva voce* examination; and they shall enter their names and the date of the examination in a book to be kept for the purpose.

"8. The certificates shall be granted and signed by the two examiners who shall have conducted the examination; and any other examiners who may have been present shall not decide on the merits of the candidates, &c.

"9. There shall be an examination on paper in all cases, and a *viva voce* examination at the discretion of the examiners.

"10. The examination in the Latin language shall consist of translations from one or more classic authors.

"12. It shall be lawful for any examiner to appoint a substitute for himself from the Board of Examiners, for the purpose of conducting an examination."

Whether students should or should not be examined *previous to being called to the Bar*, is a question on which great difference of opinion prevails. The examination that exists at present is voluntary, not compulsory. By regulation 15, "No student shall be eligible to be called to the Bar who shall not have attended during one whole year the lectures and private classes of two of the readers, or have been a pupil during one whole year, or periods equal to one whole year, in the chambers of some barrister, certified special pleader, conveyancer, or draftsman in equity, or two or more of such persons, or have satisfactorily passed a general examination."

Those who are in favour of rendering this examination compulsory argue, that it is but reasonable to require of every person seeking admission into any profession, business, or trade, to shew that he is qualified for its exercise; that this is an act of justice, not merely to himself or others, but to the community at large, who are expected to intrust their interests to his care. That such an examination is required in the other learned professions, as also for the army, navy, and many Government and public offices; and, lastly, that in olden times there was such an examination for the Bar, either directly or in the shape of public moots or disputations, the form of which was, until recently, preserved in our Inns of Court, although the reality had long disappeared.

On the other hand it is urged, that the Bar of this country has at all times so well discharged its duty to the community that innovations on the existing system are to be deprecated. That the guarantee against ignorant or incompetent persons setting up to practise that profession is the ill success that is sure to attend them: an argument which would be entitled to great weight, if the barrister's ignorance of his profession worked injury to himself alone, and did not require

the sacrifice of the property, character, or perhaps lives, of several clients before that ignorance is exposed. Moreover, it is a fallacy to assume that all persons who are called to the Bar intend to make it a profession. Many come to it in order to obtain a social position, to which they otherwise are not entitled; and some even for the purpose of settling in the country, where the title of barrister gives them a claim to respect, and perhaps even to precedence at quarter sessions and elsewhere, to which they have in reality no claim in virtue of any acquaintance with the law; and the allowing that title to be taken for such purposes is very like passing off a false coin on society.

Be this as it may, the *voluntary* examination of persons seeking to be called to the Bar has been in force for some years; but the regulations before us introduce another and different state of things, namely, the compulsory examination of persons seeking to become students of the law. Many of the arguments used for and against examination for the Bar may be used for and against this. For our own part, we cannot help thinking, that whether a preliminary examination of students is advisable or not depends much on the subjects to which it extends, and the manner in which it is conducted. If that examination embraced a large number of sciences or languages, or required any high degree of scholarship to pass it, we should be disposed to look on it as injurious. But it is limited to three subjects, namely—1. The English language. 2. The Latin language. 3. English history; and he must be a bold man who asserts that a reasonable knowledge of these is not indispensable, not merely to a professor of the higher branch of the legal profession, but even to the ordinary education of a gentleman. Still it is obvious, that an examination in any of them, the Latin language especially, might be so conducted as to exact from the candidate an amount of scholarship far beyond what is usual or necessary, and many desirable candidates for the profession of the law might be rejected in consequence. This is a matter of some importance; for we believe that the examiners are not quite agreed in their views, as to the amount of scholarship that ought to be exacted from the candidates; and we, therefore, wish that the Benchers, by whom the regulations were drawn up, had been more explicit on the subject. So with respect to the examination in the English language. Acquaintance with a language consists of two things—knowledge of its grammar, and correctness in pronouncing it. Now, we cannot suppose for a moment, that the framers of these rules intended, that persons who understand the English language grammatically were to be rejected as students for the Bar on the ground of provincial or peculiar accent;—such a rule would disqualify almost every candidate from the sister kingdoms of Scotland and Ireland, as well as not a few from England itself; and it is well known that many persons have attained, and justly attained, the highest honours and distinction in the profession of the English law, whose pronunciation of the English language was very incorrect. We believe, that on this subject also, the examiners do not all hold the

same views; and we trust that if the regulations before us are ever revised, it will not be overlooked. Even in the Latin examination the same difficulty might present itself; for although, being a dead language, its true pronunciation is lost, so that scarcely any two nations in Europe pronounce it alike, yet it is just possible that a pragmatic examiner might, in blind admiration of the English mode of pronunciation, reject a candidate who understood the language of ancient Rome far better than himself, merely because he pronounced it according to the French or German mode.

The examination of students previous to admission is not altogether new. Such an examination existed previously at the Inner Temple, in consequence of a resolution of the Benchers, passed about thirty-five years ago. Under that system, however, the examination was strictly private, the examiner and candidate being in a room alone; so that there was no check whatever on the examiner, who, if corrupt or prejudiced, might exclude the candidate from entering the profession of the law, on the pretence that his classical knowledge was deficient; thus not only destroying his prospects, but libelling his reputation as a scholar. We do not in the least mean to assert that anything of this kind ever took place, but the possibility of its occurrence is too obvious to be overlooked. Under the new regulations, as stated above, the examination must be conducted by *two* examiners, and by the rule established by the examiners, all the rest, though not on duty on the occasion, have a right to be present, and take part in it. Still we think it would be an improvement if the rejected candidate had a right of appeal to the Benchers of the Inn of Court of which he seeks to become a member, against his rejection by the examiners. This would be a powerful check on them, while, if a really unqualified person were to appeal against their decision, its correctness would be affirmed, and his ignorance and presumption be rendered more thoroughly conspicuous.

THE arguments of counsel and judgments of the several barons in the case of *The Alexandra* run to such a length, that we think we may be doing a service to those of our readers who have not time or inclination to wade through them, if we give a short account of the case, and of the grounds upon which the Court of Exchequer was equally divided in opinion on the construction to be put upon the Foreign Enlistment Act, 59 Geo. 3, c. 69. For a description of the vessel, of her build, and of the equipments which gave rise to her seizure, we will refer to "The Jurist" of the 12th March; from which it will appear, that she was in an unfinished state, and that although some of these equipments were capable of being used for purposes of war, there was no evidence that she was intended to be so completely fitted up and equipped in a port of this country, that she could, immediately on leaving such port, be used as a vessel of war. Now, the 7th section of the Foreign Enlistment Act makes it a misdemeanour in any person in any part of the United Kingdom, or in any part of his Majesty's dominions

beyond the seas, without the leave and license of his Majesty, "to equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or knowingly to aid or assist &c., with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, &c., or with intent to cruise or commit hostilities against any prince, state, or potentate, &c., with whom his Majesty shall not be at war."

The question turned upon the meaning of the words "equip, furnish, and fit out." At the trial, the Chief Baron told the jury that, in his opinion, these words meant the same thing; and, in effect, he directed them, that unless they were of opinion that the intention was *completely* to equip the vessel at Liverpool, so that she could leave that port in a condition to act aggressively, they must find a verdict for the claimants.

This was the contention of the claimants' counsel on the argument of the rule for a new trial, viz. that the case of *The Alexandra* was not within the 7th section, unless the jury was satisfied that the intention was so to equip and furnish her, that she could act as a vessel of war as soon as she left the port of Liverpool; whereas the counsel for the Crown argued, that whatever the nature of the equipments, and however unfit the vessel might be at the time she left the port to be used as a vessel of war, still, if the intent was so to use her at any future time, the case was within the section. As will be seen from the report of the case, the Chief Baron and Bramwell, B., adopted the view of the counsel for the claimants, and Channell and Pigott, BB., that of the counsel for the Crown. The Chief Baron considered, in his most able judgment, that neither the act nor the intention was so much considered by the framers of the statute as the *place*; that it was a *British port* here or abroad that was made sacred, and that the main object was to prevent the ports of this country from being made ports of hostile equipment against a friendly belligerent; that there was no direct evidence that the persons equipping *The Alexandra* had any intention to cruise or commit hostilities at all. "I am of opinion" (he says), "that the 7th section should be construed as if the words were—'if any person' (in the places mentioned) 'shall, without the leave, &c., equip,' as a means, 'any ship or vessel,' to the end, 'that such ship or vessel shall cruise or commit hostilities;' and then, if after all the equipping, or furnishing, or fitting out, the ship is incapable of cruising or committing hostilities, there has been no such equipment as the statute was intended to prevent. In my judgment, the act was not framed in order to make any difference between ships of war and guns, ammunition, and other implements, but to prevent our shores from being made the points of departure of hostile expeditions, commissioned and equipped to commit hostilities against a belligerent not at war with us."

Baron Bramwell put the point very concisely in his judgment—"What is the meaning of the words, 'with intent or in order that such ship shall be employed in the service of any foreign prince, with the intent to cruise or commit hostilities?' Does the

expression mean, 'with intent or in order that by means of such equipment she may cruise or commit hostilities; that she shall be in a condition for proximate hostilities, so that the port she leaves will be a station of hostilities?' Or does it mean, as contended by the Crown, that an intent is within the statute, where the equipment is in order that she may be employed in the service of a foreign prince, though further acts on his part are necessary to enable her to commit hostilities. I think this is a correct statement of the question, and that it must be answered adversely to the Crown's contention. I think that the fair and natural meaning of the words is, that the equipment must be fit for cruising or the commission of hostilities. The word 'intent' before 'to cruise or commit hostilities,' seems put there on purpose to shew this. I think the section prohibits that equipment only which is itself such that by means of it the vessel can commit hostilities, and that no equipment which gives no means of attack or defence is within sect. 7. I believe it was intended to *evade*, not to *infringe*, the statute. I see no evidence that it was intended to arm or equip her in the Queen's dominions so as to be capable of attack or defence."

Such were the opinions of the Chief Baron and Bramwell, B. On the other hand, Channell and Pigott, BB., considered that an equipment might be within sect. 7, although not so complete in this country that the ship should be at once able to commit hostilities; and they appear to adopt the contention of the Attorney-General, that any equipment, however peaceful in its nature, will be an offence against the act, provided there is an intent that the vessel shall be used *at some future time* in the service of a belligerent. Where the equipment is clearly peaceful, there will be much greater difficulty in proving the intent; but assuming the intent to be proved, any kind of equipment will be within the section. Suppose a jury to find, as a matter of fact, that a certain vessel is intended to be sent to the West Indies, and then to have guns put on board; that when the guns are on board, the mainsail with which she has been equipped in Liverpool may assist her in chasing an enemy's vessel, they may be justified in deducing from that fact that the mainsail is an equipment in order that she may be employed to cruise. Baron Channell thus expresses himself:—"I agree with the Chief Baron and Bramwell, B., in thinking that what this statute forbids is an equipment for war. I agree with them in thinking that the main object of the statute was to prevent our ports being made stations of hostilities. Our difference appears to be this—that they think the equipment must be intended to be completed, so that the vessel when it leaves our port shall be in a condition at once to commit hostilities; while it seems to me, that in the fair and reasonable meaning of the words used, another case is included, viz. where the equipment, not being complete to that extent, is yet capable of being used for war, and the intent is clear that it is to be used for war." This sentence expresses clearly the difference of opinion which divided the Court. It will be unfortunate if the House of Lords should agree with the Exchequer

Chamber in holding that there is no appeal, as it is high time that this unhappy section should be judicially construed by the supreme court of appeal, and, if necessary, that further legislation should take place. At present our impression is, that the Chief Baron and Bramwell, B., have put the right construction upon the section.

TRANSFER OF LAND ACT, 1862.

Abstract of Returns made pursuant to an Order of the House of Lords, dated the 8th February, 1864.

1.—Titles actually registered.

Dates of the several Registrations.	Extent.			Value of the several Estates actually registered.		
	A.	R.	P.	£	s.	d.
24th June, 1863 - -	149	0	29	15,000	0	0
24th June, 1863 - -	69	2	27	4,916	10	0
27th June, 1863 - -	10	0	0	1,142	10	0
10th August, 1863 - -	2	1	5	640	0	0
17th September, 1863	3	3	2	1,000	0	0
28th October, 1863 - {	House Property, with Gardens, &c.			30,000	0	0
2nd November, 1863 -	44	2	37	3,300	0	0
22nd December, 1863 -	325	3	7	9,400	0	0
20th February, 1864 -	64	1	39	13,000	0	0
There are two cases now ready to be entered on the register	56	2	0	12,000	0	0
	Houses, &c. - -			The value not vouched.		

2.—Number and Date of the several Applications which are still pending.

There have been sixty-five applications, and of these forty-six are now pending, the applications in which were lodged on the dates stated in the return.

3.—Number of Applications which have been withdrawn, or not prosecuted with Success.

They are nine in number; the dates of the applications and last proceedings are stated.

4.—Statement of what has been done in respect of the pending Applications.

In one case the advertisement of intended registration has issued.

In fourteen cases the title has been approved, subject to requisitions thereon, which are in the course of being answered.

In fourteen cases the abstracts have been delivered, and the titles are under investigation.

And in seventeen cases the abstracts have not yet been delivered.

5.—The Probate Value of the several Estates the Subjects of the pending Applications.

The ad valorem is payable only on the actual registration being made, and before that period the value of the estates comprised in the several applications is not inquired into or shewn. In some of the cases, however, the value has been mentioned by the parties, and in others, where the last purchase deed had been recent, the amount of the consideration money then paid has been taken therefrom; and on a calculation made from such sources, the probable value of such of the estates comprised in the pending applications as can thus be got at has been found to amount to 1,500,000*l.* and upwards.

There are, besides the estimates comprised in the foregoing valuation, nineteen other cases in which no estimation of the value can be got at.

The extent of the several estates the subjects of the pending applications, so far as the same can be got at, is about 4787 acres, of which a large part is building land.

There are, besides those comprised in that calculation, eleven other cases in which no estimation of the extent can be got at.

6.—The Total Amount of Fees received in respect of all Business done in the Office since the passing of the Act.

£180.

The ad valorem fee is payable only on actual registration, the other fees payable to the office are of trifling amount.

These returns are made up to the 1st March, 1864.

THE LORD CHANCELLOR AND THE "AUTHORISED" REPORTS.

In our number for January 23, 1864, we published with the same title as above, the following, which had been for some time going the rounds of the profession:—

"The following dialogue took place in the Lord Chancellor's Court on Wednesday, the 13th instant:—

"Counsel being about to refer to a case of *Ex parte Matheson*, stated that it was not reported in the authorised reports.

"LORD CHANCELLOR.—I do not know what are the 'authorised' reports.

"Counsel.—I mean the reports which are understood to have the authority of the Court for their accuracy.

"LORD CHANCELLOR.—I know of no such reports. I hope no reporter will ever be under the direction of the judge.

"Counsel then quoted the case from one of the 'irregular' reports."

The language here attributed to the Lord Chancellor is susceptible of several meanings. First, that there is no such thing as a reporter attached to each Court with a fixed salary, and under the direction of the judges of that Court. Secondly, that reporters being under the direction of the judges, whose decisions they report, is not desirable; but, as it is well known that his Lordship is strongly in favour of the establishment of a department of justice, he may have meant that there would be no objection, but rather advantage, in their being under the control of the minister of that department. And here we take the opportunity of mentioning that we understand that the office of reporter of the Courts at New York is a *political* office, so that the occupant may be deprived of it by the fall of his patrons. We will not vouch for this, but trust to receive information respecting it from the committee on reporting in their forthcoming report.

Be this as it may, the last number of Beavan's Reports, i. e. vol. 32, part 1, published on the 22nd instant, contains the following announcement, inside the title page:—

"THE AUTHORISED REPORTS OF THE ROLLS COURT.

"Notice.—These reports continue, as heretofore, to be published with the express sanction and authority of the Right Hon. the Master of the Rolls."

The italics are ours, and we understand that others of the regular reporters intend to make similar announcements in their next numbers.

BILL IN PROGRESS.

A Bill to amend the Law relating to future Judgments, Statutes, and Recognisances.

(Prepared and brought in by Mr. Hadfield, Mr. Locke King, and Mr. Powell.)

Whereas it is desirable to assimilate the law affecting freehold, copyhold, and leasehold estates to that affecting purely personal estates in respect of future judgments, statutes, and recognisances, as against purchasers and mortgagees: be it enacted &c.

Sect. 1. No judgment, statute, or recognisance to be entered up after the passing of this act shall affect any land (of whatever tenure), as to a bona fide purchaser for valuable consideration or a mortgage, unless at the time of such purchaser or mortgagee acquiring his title such land shall have been actually delivered in execution by virtue of a writ of elegit or other lawful authority, in pursuance of such judgment, statute, or recognisance, or he shall have had notice that such a writ of elegit or other lawful authority shall have been actually delivered to, and remain unexecuted in the hands of, the sheriff, undersheriff, or coroner.

2. In the construction of this act, the term "judgment" shall be taken to include registered decrees, orders of the courts of equity and bankruptcy, and other orders having the operation of a judgment.

3. This act shall not extend to Ireland.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, March 17.

The Bills of Exchange and Promissory Notes (Ireland) was read a second time.

Friday, March 18.

The Court of Chancery (Despatch of Business) Bill was read a second time.

The Lord Chancellor, in moving the second reading of the Conveyances, &c. (Ireland) Bill, said it was intended to remedy an evil of the same character which existed in England some years ago, and which had been corrected by legislation. It proposed for the future to subject to control the operations of conveyancers in Ireland, great abuses having grown up from many of them not being connected with any Inn of Court.

The bill was read a second time.

The Bills of Exchange and Promissory Notes (Ireland) Bill went through committee.

The Lord Chancellor laid upon the table a bill which had been prepared in accordance with the report of a select committee which sat last session, to give facilities to landowners to assist the construction of railways tending directly to benefit their estates. The noble and learned lord stated, that in the preparation of the measure the model of the Drainage Acts had been followed; and provisions had been added which were specially applicable to the construction of railways.

HOUSE OF COMMONS.—Thursday, March 17.

In reply to Mr. Murray,

Sir G. Grey said, that the Report of the Chancery Fund Commissioners would immediately be circulated.

In reply to Mr. F. Powell,

The Attorney-General was understood to say, that he would introduce a bill for the Consolidation of the Church Building Acts and New Parishes Acts after Easter.

PARLIAMENTARY COUNSEL.—(From The Times).—

The question of the reduction of the fees paid to counsel engaged before parliamentary committees has recently been more than once brought before the House of Commons. In answer to a question put by Colonel W. Patten, Mr. Milner Gibson is reported to have said, that the persons with whom he had con-

sulted on the subject had expressed themselves unwilling to be satisfied, unless the fees paid to parliamentary counsel should be fixed at the same rate as those paid to common law or chancery barristers. A scheme, relating to the reduction of these fees, appears to have been laid before Mr. Milner Gibson by some of the leaders of the parliamentary Bar, but for some reasons obvious to those acquainted with the subject, but not so well known to the general public, the reduction recommended is not so extensive as would appear to be desired by Mr. Milner Gibson's advisers.

There are, however, reasons which I think will be acknowledged to be cogent why the fees taken by parliamentary counsel should be higher than those taken by barristers practising in the other branches of the Profession.

In the first place, a barrister, who devotes himself to parliamentary practice, necessarily gives up all hope of ever attaining any of the high prizes of the Profession. For him there is no Woolsack, no office as Attorney or Solicitor-General, no common law or chancery judgeships in prospect. Nay, further, by choosing that branch of his Profession, he renders himself incapable of entering Parliament at all while continuing to practise. Again: it must be borne in mind that parliamentary counsel have only five months during which to make their income; whereas the other branches of the Profession have between eight and nine. If, therefore, men of good abilities are required to practise before committees, which, considering the importance of public and private interests involved, will hardly be disputed, it would seem that such men cannot be obtained unless the fees given be comparatively high. My excuse for troubling you with this letter is the apparent want of knowledge of the subject on the part of the general public, and the fact that the parliamentary Bar is unrepresented in the House of Commons.

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THE JURIST.

LONDON, APRIL 2, 1864.

In our number of the 12th March (ante, p. 84) we inserted, with regret, the report of a scene which took place at the Central Criminal Court between Mr. Commissioner Kerr and Mr. Metcalfe, a barrister practising before him. With increased regret we have now to direct attention to the following:—

"At the Exeter Assizes on Friday, during the hearing of a case, Mr. Carter, a barrister, made an observation which Mr. Baron Bramwell said the learned gentleman had no right to make.

"Mr. Carter.—You have no right to interrupt in this way.

"His LORDSHIP.—I have the right, for you are stating that which is incorrect.

"Mr. Carter.—I have it on my notes.

"His LORDSHIP.—Hear me out, sir. You, sir, know, that the only binding record of what a witness says is what appears on the judge's notes, and I have not got it down.

"Mr. Carter (sharply).—Then you ought to have it down.

"His LORDSHIP.—If you repeat that expression to me I'll send you out of court, sir.

"Mr. Carter.—You are at liberty to do it.

"His LORDSHIP.—Behave yourself decently, or you shall be sent out.

"Mr. Carter.—Your Lordship has no right to address me in this way.

"His LORDSHIP.—I have the right, and shall exercise it, very unpleasantly for you, perhaps.

"Mr. Carter.—You may exercise the power; but I don't know whether you have the right or not. I protest against being interrupted and addressed in this manner.

"His LORDSHIP.—Go on with your address, and conduct yourself properly.

"Mr. Carter then continued his address to the jury."

We are very sorry to observe these "scenes," which are becoming much too frequent. Last year we had occasion to notice a somewhat similar fracas between Mr. Metcalfe and Mr. Payne, the deputy assistant judge, at the Middlesex Sessions (see 9 Jur., N. S., part 2, p. 71); and, if our memory serves us right, a few years ago Mr. Carter had another with Baron Channell, on which occasion some observations were made by him which induced even that amiable and placid judge to declare that Mr. Carter had been "very personal." Our readers will also probably remember the disgraceful affair, at the Middlesex Sessions last year, between Mr. Cooper and Mr. Ribton. (See 9 Jur., N. S., part 2, p. 39).

But a still more recent affair at the Middlesex Sessions seems to have brought this matter to a climax. We feel it an act of justice to all parties, although at some inconvenience to ourselves, to give the report unabridged:—

"During Mr. Pater's cross-examination of a witness

in a case of larceny, the foreman of the jury remarked, that he thought the learned counsel had no right to insinuate that the witness was not speaking the truth.

"Mr. Pater said it would be better for the foreman not to get into collision with him, and insisted upon his right to cross-examine the witness, with a view of eliciting the truth; and, in his address to the jury, with great emphasis exclaimed, 'I thank God that there is more than one jurymen to determine whether the prisoner stole the property with which he is charged, for if there was only one, and that one was the foreman, from what has transpired to-day, there is no doubt what the result would be.'

"Mr. PAYNE said that was a very improper observation for Mr. Pater to make to the foreman of the jury, and, if he went on in that strain, he should consult the Assistant Judge, in the other court, as to what should be done.

"This sort of thing being continued,

"Mr. PAYNE left the court to consult Mr. Bodkin, and on his return said, 'I have consulted the Assistant Judge in reference to this matter; but it is his opinion, that at this stage it would not be fair to interfere, as it might prejudice the case against the prisoner at the bar; but when it is concluded, we shall then consider what course should be taken as regards Mr. Pater.'

"Mr. Pater said there ought to be a fresh jurymen in the place of the foreman who had acted so improperly.

"Mr. PAYNE.—You are only repeating your former insults.

"Mr. Pater.—And I shall continue to do so till the end of time. Things have arrived at such a pitch that I am bound to resent, and as a great number of the remarks which have fallen from the bench have been applied to me I feel it my duty to speak my mind boldly, and I will always do so, no matter what the result may be. I am intrusted with an important duty, and although the duty of the jury may be more important than mine, yet still mine is an important duty, for you are sworn to return a true and just verdict, and according to the evidence: I have to do a duty according to my conscience and the interest of the client committed to my care, and I thank God I have discharged that duty to the best of my ability, and which I shall continue to do so as long as I have the honour to wear a wig and gown. Notwithstanding the interruption I have received from the foreman of the jury, let us now approach the facts of the case, and see how the evidence points to a conclusion to warrant you in returning a verdict of guilty. My learned friend, Mr. Wood, in opening the case, asked you to return a verdict in favour of the Queen, but the Queen cared very little what result they arrived at, and I do not know why the name of the Queen was introduced unless it was to give extra weight to a case that it did not possess. He then went over the evidence, and called upon the jury to acquit the prisoner.

"Mr. PAYNE summed up the evidence, and the jury found the prisoner guilty, but recommended him to mercy.

"Mr. PAYNE having sentenced the prisoner,

"The Assistant Judge then took his seat upon the bench.

"Mr. PAYNE said—There is a matter connected with this case to which I have felt it to be my duty to draw the attention of the Assistant Judge and the magistrates. Mr. Pater made use of some observations towards the foreman of the jury of a personal character. Those observations were, 'I thank God that there is more than one jurymen to determine whether the prisoner stole the property with which he is charged, for if there was only one, and that one the foreman, from what has transpired to-day there is no doubt what the result would be.' The foreman was in that position, but although he wished some other person to take his place, his brother jurymen considered that to be unnecessary, and he remained. These personal observations were highly unjustifiable on the part of Mr. Pater, and I have thought it right to bring them under the notice of the Assistant Judge. I therefore wish the opinion of the learned Assistant Judge as to what course he would recommend should be taken.

"ASSISTANT JUDGE.—Such things as these are most painful, and tend greatly to embarrass the administration of justice. I trust that Mr. Pater will withdraw the observations.

"Mr. Pater.—Let me first inform your Lordship of a fact that has not been brought to your knowledge, for you were not present when this interruption occurred. The foreman on the previous day interfered in the same unjustifiable manner, and a learned friend of mine took the first opportunity of challenging him, and he was removed from the jury box. I can form no opinion as to his reason for doing so, unless it arose from an inability to control his own temper. I conscientiously stated my opinion, that if there had been but one jurymen to decide the case, an adverse verdict would certainly be returned, and when he interfered by making observations, such conduct was unchecked by Mr. Payne. The foreman said he knew the object of such interruptions by counsel; and, after the observations which fell from the bench, I do not feel warranted in withdrawing the observations, and adopt the course suggested by the Assistant Judge.

"ASSISTANT JUDGE.—This is a gross dereliction of duty, for the use of such language is perfectly unwarrantable. I should recommend Mr. Payne to treat these observations from Mr. Pater as a contempt of court, and, unless they are withdrawn, I should recommend that a fine of 20*l*. be inflicted on him, and returned to the Court of Exchequer, and the Barons of the Exchequer will determine whether the privilege of counsel is to be abused in that way. He hoped it would operate as an example, not much needed, because such conduct was confined to a very few individuals.

"Mr. Pater.—I have acted conscientiously, and I decline to withdraw the observations.

"Mr. Warton.—I wish to say a word. I confirm Mr. Pater in what he has said. The foreman was challenged by me for improper conduct the day before.

"ASSISTANT JUDGE.—To challenge a jurymen is

the right of counsel, but it is a very different thing to abuse him.

"Mr. PAYNE.—I saw nothing in the conduct of the foreman to justify the observations made on him.

"Mr. Pater.—I wish to make a few observations.

"Mr. PAYNE.—I must decline to hear you unless you withdraw the observations. Do you do so?

"Mr. Pater.—Certainly not.

"Mr. PAYNE.—Then I fine you 20*l*.

"Mr. Pater.—I can now say that the opinion I have formed of you is concurred in by every member of the bar.

"Mr. Abram.—I do not concur in it.

"Mr. Wood.—Nor I.

"Mr. Pater.—You (Mr. Wood) prosecuted. The matter shall not rest here. I shall bring the subject under the notice of Sir George Grey, and very probably your removal from the bench will be the result.

"In the course of the following morning, at the conclusion of a case, Mr. Pater, addressing Mr. Payne, said he had an application to make to him in reference to a matter which occurred yesterday.

"Mr. PAYNE said, he could not then listen to anything Mr. Pater had to say; but he could renew his application after the adjournment, when the Assistant Judge would be present.

"After the adjournment of the court, on Mr. Payne taking his seat, and several magistrates being on the bench,

"Mr. Pater said—I understand that the court, as now constituted, will hear the application I was about to make before the adjournment.

"Mr. PAYNE.—I have sent for Mr. Bodkin, as he wishes to be present.

"Mr. Pater.—I understood that I was sent for to make my application, and I have an engagement at chambers.

"Mr. H. HARWOOD (a magistrate).—Wait a minute until Mr. Bodkin comes, as he has been sent for.

"The Assistant Judge then entered the court, and took his seat on the bench.

"Mr. PAYNE.—Now, Mr. Pater, I am ready to hear you.

"Mr. Pater.—The application I wished to make before the adjournment of the court, and which I now make, is this—whether the words which are reported, 'I thank God that there is more than one jurymen to determine whether the prisoner stole the property with which he is charged; for if there was only one, and that one the foreman, from what has transpired to-day there is no doubt what the result would be.'—I now ask whether those are the words taken down by the court, and are those the words that are construed into a contempt of court?

"ASSISTANT JUDGE.—It is no use asking such questions. If you have any application to make you had better make it.

"Mr. Pater.—Are those the words that have been taken down?

"ASSISTANT JUDGE.—You have been told yes.

"Mr. Pater.—If those are the words taken down, my application is, that I may have a copy of the notes taken.

"Mr. PAYNE.—The words you have read are the correct words, as I have said before. I acted in the belief that by those words you insinuated that the foreman of the jury was determined to convict the prisoner whether he was guilty or not, and in violation of his oath.

"Mr. Pater.—Then I am clearly to understand that the words taken down are construed into a violation of the foreman's oath. As counsel for the prisoner, I said he had prejudged the case.

"ASSISTANT JUDGE.—This is but a waste of the public time. Do you withdraw the observations or not?

"Mr. Pater.—I never intended to withdraw the words.

"Mr. PAYNE.—The words you have read are correct. Let us have no more of the matter.

"Thus the subject ended, and the regular business of the court proceeded."

We direct attention to these proceedings in the hope that some means will be taken to put a stop to them. It is, perhaps, needless to observe, that when collisions occur between judges and counsel, sometimes the judge is in the wrong, sometimes the counsel is in the wrong, and not unfrequently both are in the wrong. In the first of the instances above given, and also in that which we published on the 12th March, the truth is too obvious to need comment; but we cannot avoid drawing attention to the different modes resorted to by Baron Bramwell on the recent occasion, and by Mr. Commissioner Kerr on the former one, in dealing with a counsel who is, or is supposed to be, insolent and refractory. Baron Bramwell plainly tells the advocate that he shall be sent out of court if he does not conform to order, and uses language intimating that, if necessary, he will commit for contempt. Mr. Commissioner Kerr, on the contrary, proceeds to adjourn the court, i. e. stop the business of the country, put all the suitors to inconvenience, and lock up the jury for the night. Adjourning the court under such circumstances may be a proper course for a revising barrister, or other judge who has no power to commit for contempt; but in a judge who does possess that power, it is highly undignified, and prejudicial to the public interest.

In the remaining and most important of these unfortunate affairs—namely, that which recently occurred at the Middlesex Sessions—we have no hesitation in pronouncing *all* parties grievously in the wrong, and the whole scene a scandal to the administration of justice. The first fault was committed by the foreman of the jury, who interfered to prevent Mr. Pater from pursuing a course of cross-examination tending to shew that one of the witnesses against his client was speaking falsely. As the nature of the evidence and observations of Mr. Pater are not given, we are unable to pronounce an opinion as to whether he was overstepping his privilege as an advocate or not. But suppose he was, it was for the judge, and not for any jurymen, to call him to order; and if Mr. Payne did as he ought, namely, directed the foreman to keep within his own province of deciding upon the facts, and not invade the province of the court, by taking upon himself to curb irregularities of

counsel, the unpleasant scene that followed might have been averted. But instead of this, Mr. Payne takes up the cudgels for the jurymen, and tells Mr. Pater, justly irritated at one of the jury thus giving his verdict before hearing the case out, that his observations were very improper, and calls on him to withdraw them. This Mr. Pater refuses to do, and, for not doing it, is fined. And here it is important to observe, that, although Mr. Pater used a great deal of very strong and utterly indefensible language to Mr. Payne; such as—"The matter shall not rest here. I shall bring the subject under the notice of Sir G. Grey, and very probably your removal from the bench will be the result;" the actual words for which he was adjudged in contempt are these:—"I thank God that there is more than one jurymen to determine whether the prisoner stole the property with which he is charged; for if there was only one, and that one the foreman, from what has transpired to-day there is no doubt what the result would be." We cannot help thinking that in this Mr. Pater received hard measure. The above words may simply have meant, that the individual juror had prejudged the case, and it was, therefore, fortunate that the fate of the accused did not depend on him alone; but suppose they are to be understood as imputing corrupt motives to the juror (whose conduct was unquestionably irregular, and such as to lay him open to observation), is that a contempt of court? Supposing the affirmative, it is surely not so bad as counsel using this language to each other in open court:—"It is a lie. You are a vulgar-minded hound, and a contemptible hound." "That is an unqualified falsehood." "You tell a gross falsehood, and your white face shews that you know it"—language which only last year was passed over by Mr. Bodkin himself, with the intimation that he must stop the altercation, and that he hoped the bar would take the matter up. (See 9 Jur., N. S., part 2, pp. 39, 40).

The power of punishing summarily for contempt of court is one which should be exercised with the greatest possible dignity and caution. That power is an anomaly in itself, for it not only constitutes a man judge in his own cause, but enables him to exercise his jurisdiction assuch, without control, and, in most cases without responsibility; add to which, that it is impossible to define the limits of the power, for contempt may consist not merely in acts or words, but in looks or demeanour. If a party committed for contempt of court sues out a habeas corpus, it is sufficient to return that he is detained for a contempt of a court of competent jurisdiction to commit; although it would be otherwise if the return stated as a contempt that which clearly was not one, unless, perhaps, the words were certified to have been spoken, or the acts done, contemptuously. (See the case of *The Sheriff of Middlesex*, 11 Ad. & El. 273, and the authorities there collected). And the same principle would probably hold where the punishment is a fine. A little reflection, however, will shew that the existence of this power, enormous and dangerous as it is, is nevertheless indispensable to the due administration of justice; and the moral of the whole is, that those who are intrusted with

the patronage of judicial offices should take more care than they sometimes do, to secure ability, discretion, and good temper in those whom they intrust with it.

THE LORD CHANCELLOR AND THE AUTHORIZED REPORTS. THE AMERICAN REPORTS.

In our last number, ante, p. 106, after referring to the language said to have been used ex cathedra by the Lord Chancellor, that he knew of no such reports as the "authorized reports," we stated that the number of Beavan's Reports, published on the 22nd March, contains the following inside the title page:—

"THE AUTHORIZED REPORTS OF THE ROLLS COURT."

"Notice.—These reports continue, as heretofore, to be published with the express sanction and authority of the Right Honourable the Master of the Rolls."

Adding, that we understood that others of the regular reporters intended to make similar announcements in their next numbers.

We are now enabled to announce, that since the publication of our last number, this course has been taken in vol. 4, part 2, of Giffard's Reports in Vice-Chancellor Stuart's Court, published on the 30th March.

While upon this subject, we may remark that the tendency of a class among us to laud and exalt the American reports in the lump, to the disparagement of our own, does not appear to be shared by the Americans themselves, or inhabitants of a country very near them. The Canada Law Journal for March, 1864, contains under the head "Law Reporting," an article from the "N. Y. Transcript," from which we extract the following:—

"The task of reporting the decisions of any court is one of more labour, and requiring a higher order of talent, than many would suppose. Almost every lawyer thinks himself competent to perform the work notwithstanding the innumerable failures of other men in the same line. Yet the fact is, that very few have the sound judgment, quick perception, and fine discrimination, which are essential to the success of a reporter. Very few of those who have actually undertaken the task have been fitted for it by nature, and the majority of American reports are not worthy of much commendation. The English reports have been of variable quality, but for the last thirty years have been prepared with faithfulness and ability.

"It would be altogether beyond our command of time or space to review all the trash that has been published in the way of Texas, Alabama, Arkansas, Tennessee, Georgia, and Florida Reports, filled as they are in great part with the maunderings of ignorant judges, compiled by utterly incompetent reporters. Nor can we do more than briefly express our regret at the lowered standard of judicial capacity in some of the Western States, which, in times past, contributed a respectable addition to American law.

"The reports of this State are of very uneven value. Johnson's, Hill's, Denio's, and Paige's Reports are valuable both for their matter and for the style in which they are prepared. Most of the others are valuable only from the fact that they contain the opinions of the Courts, and not from the ability with which they have been compiled. This is especially the case with Wendell's Reports, which are models of slovenly work. Cowen's Reports were prepared with extreme care, and are full of valuable material. The fault which we find with them is in the excessive length of the head-notes,

which include every dictum and speculation of the judges, leaving the reader in as much doubt which of the points stated are law, and which are mere illustrations. This defect greatly mars the work. The Court of Appeals reports have erred on the other side, giving only the chief points decided, and wholly omitting to notice the minor rulings of the Court, particularly on questions that are deemed (not always justly) to be settled. Thus, in *Forbes v. Waller* (25 N. Y. 430) it is expressly ruled that a creditor's action may be maintained on an execution returned in less than sixty days. In *Van Alstyne v. Cook* (Id. 489) it is adjudged that the omission of the clerk's signature to a judgment roll is an error that may be disregarded. Neither of these rulings is noticed in the head-notes, as we think they should have been, seeing that they are decisions of the Court of last resort on points not previously determined by it, though passed upon by courts below.

"It is desirable that the arguments of counsel should be given in a condensed form—indeed, it is often extremely difficult to understand the opinion of the Court without it. On the other hand, a literal transcript of counsel's briefs is generally a mere imposition upon the patience and pocket of the reader."

LIST OF SHERIFFS AND UNDERSHERIFFS, WITH THEIR DEPUTIES AND AGENTS, FOR 1864.

* * Warrants are granted in town for all places except Bristol, Canterbury, Chester, Derbyshire, Devonshire, Durham, Exeter, Gloucestershire, Gloucester City, Herefordshire, Haverfordwest, Kingston-upon-Hull, Lancashire, Lichfield City, Monmouthshire, Norwich, Poole, York City, and the remainder of the Welsh counties. Office hours—in Term, from 11 till 4, and in Vacation, from 1 till 3.

Bedfordshire—Robert Henry Lindsell, Esq., Biggleswade.

Undersh., Theed William Pearce, Esq., Bedford.

Depts., Maples, Maples, & Teesdale, 6, Frederick-place, Old Jewry, E. C.

Berkshire—Rich. H. Say, Esq., Oakley Court, near Windsor.

Undersh., J. J. Blandy, Esq., High Grove, Reading.

Depts., Gregory, Rowcliffe, & Rowcliffe, 1, Bedford-row, W. C.

Berwick-upon-Tweed—James Allen, Esq., Berwick-upon-Tweed.

Undersh., S. Sanderson, Esq., Berwick-upon-Tweed.

Dep., George Knox, 3, Bloomsbury-square, W. C.

Bristol—William Wright, Esq., Bristol.

Undersh., William Ody Hare, Esq., Bristol.

Depts., Bridges & Son, 23, Red Lion-square, W. C.

Buckinghamshire—The Hon Percy Barrington, Westbury Manor.

Undersh., Edward Robert Baynes, Esq., Aylesbury.

Dep., John M'Millin, 39, Bloomsbury-square, W. C.

Camb. & Hunt.—Geo. Onslow Newton, Esq., Croxton Park.

Undersh., Octavius R. Wilkinson, Esq., St. Neots.

Depts., Iliffe, Russell, & Iliffe, 2, Bedford-row, W. C.

Canterbury—Francis Read Bateman, Esq., Canterbury.

Undersh., Rest William Flint, Esq., Canterbury.

Depts., Kingsford & Dorman, 23, Essex-street, Strand, W. C.

Cheshire—John Ralph Shaw, Esq., Arrowe Park, Birkenhead.

Undershs., { Philip Frederick Garnett, Esq., Liverpool.
Hostage & Tatlock, Chester. A. U.

Depts., Eyre & Lawson, 1, John street, Bedford-row, W. C.

Chester (City)—Robert Littler, Esq., Chester.

Undersh., John Hostage, Esq., Chester.

Depts., Chester & Urquhart, 11, Staple-inn, W. C.

Cornwall—Day Perry le Grice, Esq., Trereife, Cornwall.

Undersh., Thomas Cornish, Esq., Penzance, Cornwall.

Depts., Eyre & Lawson, 1, John-street, Bedford-row, W. C.

Cumberland—Thomas Brooklebank, Esq., Greenlands.
Undersh., John Postlethwaite, Esq., Whitehaven.
Dep., Thomas Johnston, 5, Raymond-buildings, Gray's-inn, W. C.

Derbyshire—Sir Henry William Des Vœux, Bart., Drakelow.
Undersh., { John Richardson, Esq., Burton-upon-Trent.
 Benjamin S. Currey, Esq., Derby. A. U.
Deps., William Braikenridge & Sons, 16, Bartlett's-buildings, Holborn, E. C.

Devonshire—The Hon. Mark Geo. Kerr Rolle, Stevenstone.
Undersh., Henry Mountrich James, Esq., Exeter.
Dep., G. E. Philbrick, Girdler's-hall, 39, Basinghall-street, E. C.

Dorsetshire—Charles Wrothesly Digby, Esq., Studland.
Undersh., Thomas Flocks, Esq., Sherborne.
Deps., Warry, Robins, & Burges, 70, Lincoln's-inn-fields, W. C.

Durham—John Harrison Aylmer, Esq., Walworth Castle.
Undersh., William Emerson Wooler, Esq., Durham.
Dep., James Crowdy, 17, Serjeant's-inn, Fleet-street, E. C.

Essex—Edgar Disney, Esq., The Hyde, Ingatestone.
Undersh., { Thomas Morgan Gepp, Esq., Chelmsford.
 Gepp & Veley, Chelmsford. A. U.
Deps., Hawkins, Bloxam, & Hawkins, 2, New Boswell-court, W. C.

Exeter—Robert Thomas Head, Esq., Exeter.
Undersh., Robert William Head, Esq., Exeter.
Deps., Halse, Trustram, & Birt, 61, Cheapside, E. C.

Gloucester—Thomas Charles Avery, Esq., Gloucester.
Undersh., William Matthews, Esq., Gloucester.
Dep., William Compton Smith, 48, Lincoln's-inn-fields, W. C.

Gloucestershire—G. C. Colquitt Craven, Esq., Brockhampton Park.
Undersh., John Burrup, Esq., Gloucester.
Deps., Thomas White & Sons, 11, Bedford-row, W. C.

Hampshire—James Winter Scott, Esq., Rotherfield Park, Alton.
Undersh., T. Burnett Woodham, Esq., Winchester.
Dep., Henry Sowton, 8, Great James-street, Bedford-row, W. C.

Herefordshire—Colonel Robert Feilden, Dulas Court.
Undersh., Nicholas Lanwarne, Esq., Hereford.
Dep., George F. Cooke, 3, Serjeant's-inn, Chancery-lane, W. C.

Hertfordshire—Sir A. P. Cooper, Bart., Gadebridge, Hemel Hempstead.
Undersh., { Philip Longmore, Esq., Hertford,
 Longmore & Swarder, Hertford. A. U.
Deps., Hawkins, Bloxam, & Hawkins, 2, New Boswell-court, W. C.

Hunts. & Camb.—George Onalow Newton, Esq., Croxton Park.
Undersh., Octavius R. Wilkinson, Esq., St. Neots.
Deps., Iliffe, Russell, & Iliffe, 2, Bedford-row, W. C.

Kent—George Field, Esq., Ashurst Park, near Tonbridge Wells.
Undersh., Frederick Scudamore, Esq., Maidstone.
Deps., Palmer, Palmer, & Bull, 24, Bedford-row, W. C.

Kingston-upon-Hull—Edwin James Davis, Esq., Kingston-upon-Hull.
Undersh., J. C. Smith, Esq., Kingston-upon-Hull. (No town agent appointed).

Lancashire—Sir James Phillips Kay Shuttleworth, Bart.
Undersh., { Frederick Deacon, Esq.,
 Wilson & Deacon, Preston. A. U.
Deps., Ridsdale & Craddock, 5, Gray's-inn-square, W. C.

Leicestershire—Edwyn Burnaby, Esq., Baggrave Hall, Leicester.
Undersh., William Gregory, Esq., Leicester.
Deps., Loftus & Young, 10, New-inn, Strand, W. C.

Lichfield—Rowland Crosskey, Esq., Lichfield.
Undersh., Joh Philip Dyott, Esq., Lichfield.
Deps., S. B. Somerville, 48, Lincoln's-inn-fields, W. C.

Lincoln—George Maples Fox, Esq., Lincoln.
Undersh., Thurston George Dale, Esq., Lincoln.
Deps., Taylor, Hoare, & Taylor, 28, Great James-street, Bedford-row, W. C.

Lincolnshire—William Parker, Esq., Hanthorpe House, near Bourne.
Undersh., { Frederick Cooke, Esq., Boston.
 J. G. Williams, Esq., Lincoln. A. U.
Deps., Taylor, Hoare, & Taylor, 28, Great James-street, Bedford-row, W. C.

London—Hilary Nicholas Nissen, Esq., 43, Mark-lane.
Undersh., John Wilson Nicholson, Esq., 48, Lime-street.
Dep., Mr. Secondary Potter, 5, Basinghall-street, E. C.

Middlesex—Thomas Cave, Esq., 41, Moorgate-street.
Undersh., Charles Gammon, Esq., 9, Cloak-lane.
Deps., Burchell & Hall, 24, Red Lion-square, W. C.

Monmouthshire—Henry Charles Byrde, Esq., Goytre House.
Undersh., E. Butler Edwards, Esq., Pontypool.
Deps., Smith & Shepherd, 15, Golden-square, W. C.

Newcastle-upon-Tyne—William Hunter, Esq., Newcastle.
Undersh., William Stephen Daglish, Esq., Newcastle.
Deps., Shum & Crossman, 3, King's-road, Bedford-row, W. C.

Norfolk—Henry James Lee Warner, Esq., Little Walsingham.
Undersh., { Edmund Kent, Esq., Fakenham.
 Clement Taylor, Esq., Norwich. A. U.
Deps., Hayes, Twisden, Parker, & Co., 60, Russell-square, W. C.

Northamptonshire—Alfred Rush, Esq., Farthinghoe.
Undersh., A. Weston, Esq., Brackley, Northampton.
Deps., Torr, Janeway, & Tagart, 38, Bedford-row, W. C.

Northumberland—Henry Metcalfe Ames, Esq., Lindes.
Undersh., Wm. Forster, Esq., Belviders, Alnwick.
Deps., Gray & Mounsey, 9, Staple-inn, W. C.

Norwich—Frederick Brown, Esq., Norwich.
Undersh., Peter Edward Hansell, Esq., Norwich.
Deps., Field, Roscoe, Field, & Francis, 36, Lincoln's-inn-fields, W. C.

Nottingham—Francis Bryan Baker, Esq., Nottingham.
Undersh., Christopher Swann, Esq., Nottingham.
Deps., Loftus & Young, 10, New-inn, Strand, W. C.

Nottinghamshire—John Chaworth Musters, Esq., Annesley.
Undersh., { Edmund Percy, Esq., Nottingham.
 J. T. Brewster, Esq., Nottingham. A. U.
Deps., Taylor, Hoare, & Taylor, 28, Great James-Bedford-row, W. C.

Oxfordshire—George Glen, Esq., Stratton Audley Park.
Undersh., John Marriott Davenport, Esq., Oxford.
Deps., Davies, Son, Campbell, & Reeves, 17, Warwick-street, W.

Poole—George Braxton Aldridge, Esq., Poole.
Undersh., George Braxton Aldridge, Esq., Poole.
Deps., Skilbeck & Griffith, 34, Bedford-row, W. C.

Rutlandshire—Charles Ormston Eaton, Esq., Tixover.
Undersh., R. Newcomb Thompson, Esq., Stamford.
Dep., R. H. Peacock, 3, South-square, Gray's-inn, W. C.

Shropshire—David Francis Atcherley, Esq., Marton Hall, near Shrewsbury.
Undersh., Joshua John Peele, Esq., Shrewsbury.
Deps., Jones, Francis, & Bosanquet, 22, Austin-friars, E. C.

Somersetshire—Sir Edward Strachey, Bart., Sutton Court.
Undersh., John Nicoletts, Esq., South Petherton.
Deps., Dynes & Harvey, 61, Lincoln's-inn-fields, W. C.

Southampton—David Davis, Esq., Southampton.
Undersh., James Sharp, Esq., Southampton.
Dep., R. H. Peacock, 3, South-square, Gray's-inn, W. C.

Staffordshire—Thomas Thorneycroft, Esq., Tottenhall Wood, Wolverhampton.
Undersh., Robert William Hand, Esq., Stafford.
Deps., Thomas White & Sons, 11, Bedford-row, W. C.

Suffolk—Sir Geo. Nathaniel Broke Middleton, Bart., Nacton.
Undersks., { Alfred Cobbold, Esq., Ipswich.
 Jackson & Sparke, Bury St. Edmunds.
 A. U.
Depts., Aldridge & Bromley, 1, South-square, Gray's-inn, W. C.

Surrey—Thomas Price, Esq., Heywood, Cobham.
Undersk., Charles James Abbott, Esq., 8, New-inn.
Depts., Abbott, Jenkins, & Abbott, 8, New-inn, Strand, W. C.

Sussex—Wm. Leyland Woods, Esq., Chilgrove, Chichester.
Undersk., George P. Clarkson, Esq., Horsham.
Depts., Palmer, Palmer, & Bull, 24, Bedford-row, W. C.

Warwickshire—James Beech, Esq., Brandon.
Undersk., Thomas Heath, Esq., Warwick.
Depts., Taylor, Hoare, & Taylor, 28, Great James-street, Bedford-row, W. C.

Westmoreland—Matthew Thompson, Esq., Kirkby Stephen.
Undersk., Thomas Robinson, Esq., Appleby.
Dep., James Crosby, 3, Church-ct., Old Jewry, E. C.

Wiltshire—John L. Phipps, Esq., Leighton House, Westbury.
Undersks., { H. W. Pinniger, Esq., Westbury.
 C. M. C. Whatman, Esq., Salisbury.
 A. U.
Depts., Gregory, Rowcliffe, & Rowcliffe, 1, Bedford-row, W. C.

Worcester—James Dyson Perrins, Esq., Worcester.
Undersk., Samuel Martin Beale, Esq., Worcester.
Depts., Hancock, Saunders, & Co., 36, Carey-street, Lincoln's-inn, W. C.

Worcestershire—Harman Grisewood, Esq., Daylesford House.
Undersks., { Wm. Nichols Marcy, Esq., Bewdley.
 E. Gillam and J. F. Gillam, Worcester.
 A. U.
Depts., Iliffe, Russell, & Iliffe, 2, Bedford-row, W. C.

York—Ralph Weatherley, Esq., Clarence House, York.
Undersk., William Walker, Esq., 9, Lendall, York.
Dep., None appointed.

Yorkshire—Frederick Charles Trench Gascoigne, Esq., Parlington Park.
Undersk., William Gray, Esq., York.
Depts., Bell, Brodrick, & Bell, Bow-churchyard, E. C.

NORTH WALES.

Anglesey—William Massey, Esq., Cornelyn.
Undersk., John Williams, Esq., Beaumaris.
Depts., Bloxam, Ellison, & Bloxam, 1, Lincoln's-inn-fields, W. C.

Carnarvonshire—Griffiths Humphrey Owen, Esq., Ymwlch.
Undersk., J. Humphrey Jones, Esq., Portmadoc.
Depts., M'Leod & Cann, 1, Lincoln's-inn-fields, W. C.

Denbighshire—Boscawen T. Griffith, Esq., Trevallyn Hall, Wrexham.
Undersk., Marcus Louis, Esq., Brynhyfryd, Ruthin.
Dep., John Douglass Finney, 6, Farnival's-inn, E. C.

Flintshire—Wm. Barber Buddicom, Esq., Penbedw, Mold.
Undersks., { A. T. Roberts, Esq., Mold.
 Roberts, Kelly, & Keene, Mold.
 A. U.
Depts., Roberts & Simpson, 62, Moorgate-street, E. C.

Merionethshire—Lewis Williams, Esq., Vronwnion.
Undersk., Griffith Williams, Esq., Dolgelly.
Dep., Charles Wilkin, 10, Tokenhouse-yard, E. C.

Montgomeryshire—Maj.-Gen. William George Gold, Garthmyl Hall.
Undersk., Abraham Howell, Esq., Welshpool.
Depts., N. C. & C. Milne, 2, Harcourt-buildings, Temple, E. C.

SOUTH WALES.

Breconshire—Sir Joseph Russell Bailey, Bart., Glanusk Park.
Undersk., Joseph Richard Cobb, Esq., Brecon.
Depts., Wilkins & Blyth, 10, St. Swithin's-lane, E. C.

Cardiganshire—John George Parry Hughes, Esq., Alltŵyd.
Undersk., F. Rowland Roberts, Esq., Aberystwith.
Dep., Edward Balden, 11, Southampton-buildings, W. C.

Carmarthenshire—Henry Lavallin Puxley, Esq., Llwyn-drussy.
Undersk., George Thomas, Esq., Carmarthen.
Depts., Norris & Allen, 20, Bedford-row, W. C.

Carmarthen—William Aylwray Davies, Esq., Carmarthen.
Undersk., Lewis Morris, Esq., Carmarthen.
Depts., Chilton, Burton, Yeates, & Hart, 25, Chancery-lane, W. C.

Glamorganshire—Robert Francis Lascelles Jenner, Esq., Vronwnion.
Undersk., John Morris, Esq., Cardiff.
Depts., Canliffe & Beaumont, 43, Chancery-lane, W. C.

Haverfordwest—Thomas Williams, Esq., Haverfordwest.
Undersk., William Davies, Esq., Haverfordwest.
Dep., T. H. Smith, Frederick's-place, Old Jewry, E. C.

Pembrokeshire—Thomas Harcourt Powell, Esq., Hook.
Undersk., J. Rogers Powell, Esq., Haverfordwest.
Depts., Eyre & Lawson, 1, John-street, Bedford-row, W. C.

Radnorshire—G. Augustus Haig, Esq., Pen Ithon, Llanbarn Fynidd.
Undersk., William Stephens, Esq., Presteign.
Depts., Harwood & Pattison, 10, Clement's-lane, Lombard-street, E. C.

Court Papers.

EQUITY SITTINGS, BEFORE AND IN EASTER TERM, 1864.

BEFORE EASTER TERM.

Before the LORD CHANCELLOR.

At Lincoln's Inn.

Tuesday .. April 12 { Seal Day.—Appeal Motions and Appeals.
 Wednesday 13 { Petitions and Appeals in Bankruptcy and Appeals.
 Thursday 14 { Appeals.

EASTER TERM.

Friday 15 { Appeal Motions and Appeals.
 Saturday 16 { Appeals in Bankruptcy and Appeals.
 Monday 18 } Appeals.
 Tuesday 19 }
 Wednesday 20 { Appeals in Bankruptcy and Appeals.
 Thursday 21 { Appeal Motions and Appeals.
 Friday 22 { Appeals.
 Saturday 23 { Appeals in Bankruptcy and Appeals.
 Monday 25 } Appeals.
 Tuesday 26 }
 Wednesday 27 { Appeals in Bankruptcy and Appeals.
 Thursday 28 { Appeal Motions and Appeals.
 Friday 29 { Appeals.
 Saturday 30 { Appeals in Bankruptcy and Appeals.
 Monday May 2 } Appeals.
 Tuesday 3 }
 Wednesday 4 { Appeals in Bankruptcy and Appeals.
 Thursday 5 { Appeal Motions and Appeals.
 Friday 6 { Appeals.
 Saturday 7 { Appeals in Bankruptcy and Appeals.
 Monday 9 { Appeal Motions and Appeals.

N. B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

BEFORE EASTER TERM.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Tuesday .. April 12 { Seal Day.—Appeal Motions and Appeals.
 Wednesday 13 {
 Thursday 14 } Appeals.

EASTER TERM.

Friday 15 { Appeal Motions and Appeals.
 Saturday 16 { Petitions in Lunacy, Appeal Petitions, and Appeals.

Monday.....	18	} Appeals.
Tuesday.....	19	
Wednesday	20	
Thursday	21	
Friday	22	} Appeal Motions and Appeals. Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	23	
Monday.....	25	
Tuesday.....	26	
Wednesday	27	} Appeals.
Thursday	28	
Friday	29	
Saturday	30	
Monday May 2	3	} Appeals.
Tuesday.....	3	
Wednesday	4	
Thursday	5	
Friday	6	} Appeal Motions and Appeals. Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	7	
Monday.....	9	

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

BEFORE EASTER TERM.

Before the MASTER OF THE ROLLS.

At Chancery-lane.

Tuesday .. April 12	} Seal Day.—Motions and General Paper.
Wednesday 13	
Thursday	

EASTER TERM.

Friday	15	} Motions and General Paper. Petitions, Short Causes, Adjoined Summonses, and General Paper.
Saturday	16	
Monday.....	18	
Tuesday.....	19	
Wednesday	20	} General Paper.
Thursday	21	
Friday	22	
Saturday	23	
Monday.....	25	} Motions and General Paper. General Paper.
Tuesday.....	26	
Wednesday	27	
Thursday	28	
Friday	29	} Petitions, Short Causes, Adjoined Summonses, and General Paper.
Saturday	30	
Monday May 2	3	
Tuesday	3	
Wednesday	4	} General Paper.
Thursday	5	
Friday	6	
Saturday	7	
Monday.....	9	} Petitions, Short Causes, Adjoined Summonses, and General Paper.

N.B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

BEFORE EASTER TERM.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Lincoln's Inn.

Tuesday .. April 12	} Seal Day.—Motions, Adjoined Sum- monses, and General Paper.
Wednesday 13	
Thursday	

EASTER TERM.

Friday	15	} Motions, Adjoined Summonses, and General Paper.
Saturday	16	
Monday.....	18	
Tuesday.....	19	
Wednesday	20	} General Paper.
Thursday	21	
Friday	22	
Saturday	23	
Monday.....	25	} Motions, Adjoined Summonses, and General Paper.
Tuesday.....	26	
Wednesday	27	
Thursday	28	
Friday	29	} Petitions, Adjoined Summonses, and General Paper.
Saturday	30	
Monday May 2	3	
Tuesday.....	3	
Wednesday	4	} General Paper.
Thursday	5	
Friday	6	
Saturday	7	
Monday.....	9	} Short Causes, Adjoined Summonses, and General Paper.

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BEFORE EASTER TERM.

Before the Vice-Chancellor Sir JOHN STUART.

At Lincoln's Inn.

Tuesday .. April 12	} Seal Day.—Motions and Causes.
Wednesday 13	
Thursday	

EASTER TERM.

Friday	15	} Motions and Causes. Petitions, Short Causes, and Causes.
Saturday	16	
Monday.....	18	
Tuesday.....	19	
Wednesday	20	} Causes.
Thursday	21	
Friday	22	
Saturday	23	
Monday.....	25	} Motions and Causes. Petitions and Causes.
Tuesday.....	26	
Wednesday	27	
Thursday	28	
Friday	29	} Short Causes and Causes.
Saturday	30	
Monday May 2	3	
Tuesday.....	3	
Wednesday	4	} Causes.
Thursday	5	
Friday	6	
Saturday	7	
Monday.....	9	} Short Causes and Causes. Motions.

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BEFORE EASTER TERM.

Before the Vice-Chancellor Sir W. P. Wood.

At Lincoln's Inn.

Tuesday .. April 12	{ Seal Day.—Motions and General Paper.
Wednesday 13	
Thursday 14	{ General Paper.

EASTER TERM.

Friday 15	{ Motions and General Paper.
Saturday 16	
Monday 18	{ Petitions, Short Causes, and General Paper.
Tuesday 19	
Wednesday 20	{ General Paper.
Thursday 21	
Friday 22	{ Motions and General Paper.
Saturday 23	
Monday 25	{ General Paper.
Tuesday 26	
Wednesday 27	{ General Paper.
Thursday 28	
Friday 29	{ Motions and General Paper.
Saturday 30	
Monday May 2	{ Petitions, Short Causes, and General Paper.
Tuesday 3	
Wednesday 4	{ General Paper.
Thursday 5	
Friday 6	{ Motions and General Paper.
Saturday 7	
Monday 9	{ General Paper.
Tuesday 10	

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

NISI PRIUS SITTINGS, IN AND AFTER EASTER TERM, 1864.

Court of Queen's Bench.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Monday, April 18	1st sitting, Friday .. April 22
2nd sitting, Monday 25	2nd sitting, Friday 29
3rd sitting, Monday .. May 2	
For undefended causes only.	

After Term.

Tuesday May 10	Friday May 13
----------------------	---------------------

The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Special juries will be tried in London at the Sittings after Term.

Court of Common Pleas.

In Term.

MIDDLESEX.	LONDON.
Monday April 18	Friday April 22
Monday 25	Friday 29

After Term.

Tuesday May 10	Friday May 13
----------------------	---------------------

The Court will sit during and after term at ten o'clock.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Exchequer of Pleas.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Monday, April 18	1st sitting, Friday .. April 22
2nd sitting, Monday 25	2nd sitting, Friday 29
3rd sitting, Monday .. May 2	

After Term.

Tuesday May 10	Friday May 13
----------------------	---------------------

The Court will sit during and after term at ten o'clock.

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THE JURIST.

LONDON, APRIL 9, 1864.

In these days, when so many great and important undertakings are carried out by means of companies, questions not unfrequently are raised as to the powers of directors to bind by their acts, the other shareholders.

In solving these questions, our Courts are in a great measure guided by those principles which have long been applied to ordinary partnerships.

As a general rule, in ordinary partnerships, one partner can in the absence of contract only bind the other partners by acts which fall within the usual course of their business, nor can he apply the funds or pledge the credit of the partnership for any other purposes.

In like manner, the directors of companies established for one undertaking cannot apply their funds for another. For instance, a company established for granting life and fire insurances cannot engage in marine insurances; and even if all the directors, sanctioned by a large majority of the shareholders, were to do so, their act would be *ultra vires*, and they might be restrained by the injunction of a court of equity upon the interposition even of a single shareholder. Again: a company established to make a railway and exercise the trade of carriers upon it, from one town to another, cannot add to it the trade of a steam-packet company. It is obvious that if directors were allowed so to apply the funds of companies, they would in numerous instances, of course under colour that they were acting for the benefit of the shareholders, engage in hazardous speculations to which the shareholders never assented when they joined such companies. And there would, moreover, be a temptation to mere speculating adventurers to get up companies for one object, with the original intention kept back from the public, of applying its funds and credit for another.

It is, however, by no means an easy matter always to determine whether certain acts of directors fall within the scope of their powers. This, in a great measure, depends upon the terms of their act of Parliament, deed of settlement, or other instrument establishing the constitution of the company, and the construction to be placed upon them. The Courts, however, seem disposed, where there exists *bona fides* on the part of directors, and the acts complained of have been done for the purpose of furthering the objects for which the company was established, to place a liberal construction upon the powers given to them.

A recent case of great importance well illustrates the views the Courts adopt on such occasions. The case to which we allude is that of *Taunton v. The Royal Insurance Company* (10 Jur., N.S., part 1, p. 291). There, it appears that the Royal Insurance Company were incorporated as a joint-stock company, under the 7 & 8 Vict. c. 110. The deed of settlement declared, that the business or purpose of the company should be (among other things), "to effect insurances on erections of every kind, . . . on goods, wares,

merchandise, and on all other personal chattels whatever, against the risk of loss or damage by fire, or by storm or other casualty."

Power was given to the board of directors to adjust and settle losses, pay debts and claims of the company; and there was a power, whenever it was not otherwise provided by the special regulations of the company, that the directors should act in such manner as might appear to them best calculated to promote the interests of the company.

The policies of the company against loss or damage by fire expressly provided, by one of its conditions, that the company "would not be responsible for any loss or damage by explosion, except for such loss or damages as should arise from explosion of gas."

On the 15th January a vessel, called *The Lotty Sleigh*, having on board a considerable quantity of gunpowder, exploded while in the Mersey, and shattered the glass in the windows of different edifices in Liverpool and Birkenhead, which were insured against loss or damage by fire in the office of the Royal Insurance Company.

The directors, on the following day, resolved to pay any claims which might be made against the company in respect of the damage so caused, whereupon a bill was filed against them by the plaintiff to restrain them from making the payment, as being unauthorised and improper.

It appeared in evidence that the course taken by the directors was approved of by the majority of the shareholders; that most of the payments had been made, but expressly *ex gratia*, and without admitting any liability on the part of the company; that other companies had followed the example of the Royal Insurance Company; and, moreover, that it was usual for insurance offices to settle such claims, even although they were expressly excepted from the policies. Sir W. P. Wood, V. C., held that the plaintiff was not entitled to the relief he asked, and, as he had come to the court upon the strict point of law, and not for the benefit of the company, dismissed his bill with costs.

His Honor, in giving judgment, assumed (and he could not have done otherwise) that the policies would not have covered the losses in question.

The losses, however, were such as the directors had, under the deed of settlement, power to grant insurances against. Their doing so, in fact, would not have been *ultra vires*. The question, therefore, really was, whether or not, where there was a contract, and damage had been done by something decidedly analogous to the risk insured, but which was not strictly within the risk insured, the directors might say, that, for the benefit of the company, having only a few customers who had suffered, it would be desirable, without in any way giving rise to a complaint of dealing harshly with them upon narrow forms, and according to the strict terms of the contract, to pay certain small losses, rather than incur the risk of being damaged in the character of a liberal company, especially, as by so doing, they might not only procure their present, but also obtain other customers in consequence of their liberality. In determining this ques-

tion, the evidence as to usage was considered by his Honor to be material, because all persons associating themselves together for the purpose of carrying on any trade or business, do so with the intention of carrying on the business according to the usual mode. If, then, in the ordinary course of carrying on insurance companies, it is the practice, for the benefit of the companies, and with the object of extending their business, to pay losses, although the events have not precisely happened on which they are strictly payable, directors having powers to act, in such manner as may appear to them best calculated to promote the interests of a company, may, for such objects, and against the wishes of individual shareholders, make such payments.

The decision of Sir W. P. Wood appears to us to be founded on sound common sense, and to be warranted by the principles laid down by the House of Lords in *Simpson v. The Westminster Palace Hotel Company* (8 Jur., N. S., part 1, p. 985). There a joint-stock company, the objects of which were declared by the third clause of the memorandum of association to be "for the purchase of leasehold land in the city of Westminster; the erection, furnishing, and maintenance of an hotel therein; the carrying of the usual business of an hotel and tavern therein; and the doing all such things as were incidental, or otherwise conducive, to the attainment of the above objects." The company bought, and erected an hotel, but before starting their business, let a portion of it as offices to the insurance board for a term of three years, extendible to five, with a stipulation that the company should have the monopoly of supplying the premises occupied by the board with all provisions, wines, and liquors. It was held by the House of Lords, affirming the decision of Sir W. P. Wood, V. C. (8 Jur., N. S., part 1, p. 764), and of the Court of Appeal, dissentiente Sir G. J. Turner, L. J. (8 Jur., N. S., part 1, p. 747), that the agreement entered into by the directors was not ultra vires. The Lord Chancellor (Lord Campbell) in giving judgment, said he relied much upon the consideration that the arrangement was temporary, and preliminary and conducive to the ultimate object of the whole building being devoted to the proper business of the hotel. The anticipation expressed by the majority of the shareholders would not be sufficient if the original undertaking were abandoned, or if there were any extension of the original undertaking, but, as there was neither abandonment nor extension of the original undertaking, and the arrangement might assist instead of obstructing the prosecution of the original undertaking, his Lordship thought the decree appealed against ought to be affirmed.

From these cases we may arrive at the conclusion, that where directors of companies do acts, the object of which is in furtherance of the purposes of the association, courts of equity will not, at the instance of individual shareholders, restrain the commission of such acts, although they may not in strict terms be provided for in the articles of association, or the performance thereof is not strictly obligatory upon the directors, by the contracts they have entered into.

These cases are totally distinct from those where

directors, acting ultra vires, apply the funds of the shareholders to objects totally distinct from the purposes for which the company was formed. In the latter cases the Courts interpose to protect the capital of the shareholders from being applied to speculations to which they never assented; in the former cases the Courts, with great wisdom, refuse to hamper the action of directors for the benefit of the company in matters within the scope, though not, perhaps, strictly within the letter, of the articles of association. A different course of decision would lead to much litigation, for few companies, however flourishing, are without discontented shareholders, and a discontented shareholder can without difficulty find an enterprising attorney.

It must be matter of observation to any one who has read the reports of causes tried on the several circuits during the present spring assizes, that a large proportion of them have, as soon as the case has been opened, or, during the progress of the trial, been referred to arbitration—a practice which, in the experience of everybody acquainted with the business of the courts, is gradually increasing, and which should, therefore, if improvement is required in it, be improved. Of late years there have been some strong attacks on the system of trial by jury, as being uncertain, unsatisfactory, and capricious, while, on the other hand, the system has been stoutly defended as the best way of doing justice between parties, and as an essential and time-honoured part of our constitution. The fact is, that, as in most questions is the case, both the attack upon, and the defence of, trial by jury, are too sweeping and general. In certain classes of causes a jury is the best tribunal; in others, the worst. And the Legislature, being of this opinion, has extended the powers of judges and parties to compel a reference to arbitration of causes in which numerous items are involved, and accounts have to be investigated which it is not likely that a jury will have time or patience to inquire into. For this reason the provisions as to arbitration in the Common-law Procedure Act, 1854, were enacted, which provisions are most extensively carried out, and have, perhaps, been applied to cases hardly within the intent or language of the statute. The cases within these statutory provisions are generally referred to the Masters of the several courts, and, upon the whole, are not cases in which any very important questions of law are raised, or any large amounts are in dispute. In the latter classes of causes the parties wish to select the arbitrator, as it is not every Master who is considered a satisfactory or agreeable referee, and, therefore, both in these cases and in causes referred at the assizes or the sittings in Westminster or London, the parties select a barrister as the arbitrator. Having thus selected their own tribunal, they can have no good reason for complaining of the result, whatever it may be; but there is a general cause of complaint, which is, no doubt, sound and just, with respect to these references, in which barristers are arbitrators, viz. the great delay which so constantly takes place. Every barrister and attorney knows that it is no unusual thing for an

arbitration, in which the matters referred are heavy, and the items and witnesses numerous, to extend over two and sometimes three years, till at last the parties are worn out and sickened by the delay, and make a solemn vow that they will never refer a cause again. There is no doubt that great discredit is cast upon the system of arbitration by this habitual delay. If the counsel attending before the arbitrator are in large practice, the other calls upon their time constantly are in conflict with the appointments of the arbitrator, and it is always, and perhaps too much, considered, that his appointments must give way to court business; they may be postponed while the Courts enforce attendance peremptorily. The arbitrator himself may also, for the same reasons, be prevented from making appointments, or keeping them when made, and is also reluctant, from motives of friendship or courtesy and kindness to the counsel who are attending before him, to enforce attendances which may operate to their inconvenience and to damage them with their other clients. The judges themselves will do all that they can to consult the convenience of counsel, and it is only natural that a barrister should do so in the case of gentlemen who may be his own personal friends. If a weakness, it is a weakness which is excusable, and which at all events is inherent in the system; and yet it ought not to be the case. The interest of the parties should be the first consideration. If a plaintiff is claiming, and is entitled to, a large sum of money, delay may be his ruin. If a defendant is sued for a large sum, he may have a perfectly good defence, and yet the fact of a heavy claim being made against him, and being undetermined, may be his ruin. We apprehend that this delay so much complained of is most certainly a vice in the system of references to barristers. The subject has been one much discussed in the Profession, and one suggestion is that there should be a court of arbitrators, that is, a certain number of judicial arbitrators, among whom causes referred should be allotted, who should take them from day to day till they are ended, and before whom the attendance of counsel should be as compulsory as it is before any other court. An arbitrator so appointed would be relieved from all charge of want of courtesy or of consideration to the convenience of counsel, inasmuch as it would be not the judge, but the law, which enforces their attendance, and the parties could then have no ground for complaining of unnecessary delay. The result might be, that there would be formed an arbitration bar, composed of gentlemen who devoted themselves to this branch of business. Whether or not this would be the case, and whether or not this suggestion of judicial arbitrators is a wise one, still we think the subject deserves, and indeed requires, consideration. There is no doubt that the number of causes referred is on the increase; that there is great delay in arbitrations; and that there is but little hope that delay will cease to be a cause of complaint. Any suggestion, therefore, which draws attention to the subject, and invites the opinions and suggestions of other minds, deserves to be well and seriously weighed.

SUCCESSION DUTY.

Re WALLOP'S TRUSTS.

THE fate of the Succession Duty Act is to be better praised, and to raise more disputes, than any other act in the book. It is the infernal *Atée* in good apparel. The question discussed, but not decided, in *Lovelace's case* (5 Jur., N. S., part 1, p. 694; 4 De G. & J. 340; see 8 Jur., N. S., part 2, p. 507), namely, whether succession duty is payable in respect of a succession created by a settlor domiciled abroad, has been again raised in the recent case of *Re Wallop's Trusts* (10 Jur., N. S., part 1, p. 328), and is still undecided. The material circumstances of that case were, that a testator, William Wallop, domiciled in England, by his will, dated in 1850, gave his residuary real and personal estate to trustees, upon trust to be converted into money, and directed them to pay the income of the investments to his daughter H. Wallop, during her life, for her separate use, and after her decease, to transfer the capital to her children, and if she should have no child, to such person or persons, and in such manner as she should, being unmarried, by deed, or, whether married or not, by will appoint, and in default of appointment, to the persons therein mentioned. The testator died in 1856, and in the following year H. Wallop married Moses Gibaut, who was domiciled in Jersey. By her will, H. Gibaut, in exercise of the power in her father's will, appointed 3000*l.* Consols, part of the fund, to S. Croxford, and 1000*l.* Consols, other part of the fund, to S. Waters; and gave the residue of her personal property, whether places in the Island of Jersey or elsewhere, and in her possession or in the hands of trustees, to her husband, M. Gibaut. She died in 1860, domiciled in Jersey, without issue. The executors under W. Wallop's will paid legacy duty, at 1*l.* per cent., on the whole of the residue of his estate; and the residue in court had been paid out to the claimants under H. Gibaut's will, with the exception of a sum retained to pay legacy or succession duty, if any should be payable. The Court directed payment of succession duty on the two legacies of 3000*l.* and 1000*l.*, and payment of the residue of the fund to M. Gibaut, no duty being claimed by the Crown in respect of the residue given to him by his wife. The Crown rested the claim on the Legacy Duty Act, 36 Geo. 3, c. 52, s. 7, which charges every testamentary appointment of personality under a general power, and contended, that the rule established in *Thomson v. The Advocate-General* (12 Cl. & Fin. 1; 9 Jur., part 1, p. 217), that legacy duty is not payable on legacies given by the will of a testator who dies domiciled abroad, does not extend to appointments under a power; and if the duty was not given by the Legacy Duty Acts, then it was claimed under the Succession Duty Act, on the authority of *Re Lovelace*, and of *The Attorney-General v. Fitzjohn* (2 H. & Norm. 465). The Court disallowed the claim to the duty under the Legacy Duty Acts, on the ground that it was settled that the Legacy Duty Acts are confined to England, and, as personal estate follows the person, cannot extend to legacies

given by testators domiciled abroad; and that the Legislature, in the 7th section of the 36 Geo. 3, c. 52, by putting legacies given under general powers in the same category as legacies given out of the testator's own estate, must have intended them to be subject to the same rule. But the Court considered, that the Succession Duty Act ought not to receive the same limited construction as to its applying only to persons domiciled in Great Britain, as had been given to the Legacy Duty Acts, and saw no reason to alter their determination in *Lovelace's case*. "Not only," said Sir G. J. Turner, L. J., "is the act, in the 2nd section, which defines what shall be a succession, wide and general in its terms, but the definition there given extends to, and embraces, not only testamentary dispositions, but dispositions of every description by way of settlement or otherwise; and dispositions not only of personal, but of real property also. The act, therefore, was clearly intended to extend to cases which can in no way be affected by the rule, that mobilia sequuntur personam; and it would be very difficult to say, that in the case of real estate devised by a testator domiciled out of Great Britain, the devisee could be liable to the duty imposed by this act, which would clearly be the case, according to the terms of the act, if the legatee of the personal estate of a person so domiciled, or the appointee of the donee of a person so domiciled, was not equally intended to be so liable. The 44th section of the act, rendering the trustees of the property subject to the duty personally liable, seems to me in some degree to strengthen the view, and it is, I think, much confirmed by the exemption clause, sect. 18, which points out the cases in which the duty is not to be chargeable. I adhere, therefore, to our determination in the case of *Re Lovelace*, and am of opinion that, by the 2nd section of the act, the legatees of persons domiciled out of Great Britain, and the appointees by will of the donees of powers so domiciled, were intended to be made subject to the payment of the duty."

It is not stated, and does not appear to have been thought material, whether or not the legatees were domiciled in Great Britain.

The scope of the Succession Duty Act being, in respect of domicile, more extensive than that of the Legacy Duty Act, in the opinion of the Court (or rather of Sir G. J. Turner, L. J., for Sir J. L. Knight Bruce, L. J., held, more vaguely, the opinion that some sort of duty was payable somehow), it was not found difficult to arrive at the conclusion that the 18th section of the Succession Duty Act, which provides, that "no duty shall be payable under that act by any person in respect of a succession, who, if the same was a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof under the Legacy Duty Act," did not prevent the duty from attaching, but was confined to cases which, being within the scope of the general provisions of the Legacy Duty Acts, were by special provision exempted, as had been decided in *The Attorney-General v. Fitzjohn* (2 H. & Norm. 465), with reference to a succession created by the will of a testator who died before the imposition of the legacy duty on such succession.

The point actually decided in *Wallop's case* was identical with the point in *Lovelace's case*; but Sir G. J. Turner, L. J., in stating his opinion to be, that succession duty is chargeable on the legatees of persons domiciled out of Great Britain, went far beyond what was laid down in the earlier case. In *Lovelace's case*, Maria Vanneck, on her marriage with Mr. Lovelace in 1817, settled her share of the residue of her father's estate upon trust for her issue, and, in default of issue, upon such trusts as she should appoint. Having subsequently acquired a French domicile, she made a testamentary apportionment of 10,000*l.*, part of the fund, to natives of France, domiciled there, and died at Bordeaux, where she was domiciled, in 1856. The fund having been paid into court, under the Trustees Relief Act, the Crown claimed legacy and succession duties. The claim of legacy duty was abandoned at the hearing, and that of legacy duty was disallowed by Sir W. P. Wood, V. C., but was allowed by the Lords Justices on appeal, on the ground that the legatees took by relation under the settlement. The Vice-Chancellor appears to have rested his decision on the very strange argument, that appointments under general powers were not within the 2nd section of the act, but were chargeable only according to the provisions of the 4th section—an argument which appears to us to be clearly untenable, but which seems to have driven the Lords Justices as far wrong in the opposite direction, for they, in their anxiety to avoid the consequences of the Vice-Chancellor's conclusion, that no appointment confers a succession unless it falls within the terms of the 4th section, could see no alternative but to revert to the donor of the power as a predecessor under the general terms of the 2nd section. We have already attempted to determine the true construction of the 4th section (7 Jur., N.S., part 2, p. 507), and we think that it affords a conclusive answer to the ratio decidendi enounced in *Lovelace's case*, which, as we have seen, is very different from that in *Wallop's case*, though the Court considered the cases to be identical, as in fact they were. The object of the 4th section is to explain what is to be regarded as a succession, and who is to be regarded as the successor, in the cases of an appointment, 1, under a general power; 2, under a special power; and it provides that, where a person has "a general power of appointment under any disposition of property taking effect upon the death of any person dying after the time appointed for the commencement of this act," i. e. a power which does not arise until such death; as where it is given by the will of a relation who dies after the passing of the act, the donee upon exercising the power (coming into enjoyment of the dominion over the property) shall be deemed then to take a succession from the donor; but in the case of the exercise of a special power, the appointee shall take the appointed property as a succession from the donor of the power. The section, as we stated in the article referred to, was clear enough in the original bill, and stood thus:—"Where any person shall have a general power of appointment arising upon the death," &c., and was altered in committee by some one who did not know what he was doing, but who has not

succeeded in making it quite unintelligible. There is no reason to hesitate as to the construction, for it is nothing more than the 18th section of the stat. 36 Geo. 3, c. 52, abridged almost to obscurity. If, then, the Legislature has provided that in the case only of an appointment under a *special* power, the *appointee* takes a succession from the donor, while in the case of a *general* power, the *appointor* takes a succession from the donor, it follows that, for the purposes of the act, the donee of a general power takes the power (if he exercises it) as his own property, and if he appoints it so to create a succession, his appointee will take that succession from him.

If *Lovelace's case* and *Wallop's case* cannot be supported on the grounds on which the decision in the former case was expressly rested, then the tenability of the ground taken in the latter case will have to be considered; and if it is established, many more fights must be fought between the Crown and foreigners, or claimants of foreign property, or under foreign settlers, and the question, which was intelligibly and satisfactorily settled in *Thomson v. The Advocate-General* (12 Cl. & Fin. 1; 9 Jur., part 1, p. 217), must be reopened. In that case the House of Lords, following the unanimous opinion of the judges, decided, that as the general words of the statute, "every legacy given by any will or testamentary instrument of any person," must of necessity receive *some* limitation in their application—such necessary limitation, as to *personal estate*, is, that the statute does not extend to the will of any person who at the time of his death was domiciled out of Great Britain, whether the assets are locally situate within England or not, and wherever and however the assets may be administered. (See *The Attorney-General v. Napier*, 15 Jur., part 1, p. 253). The enunciation of the rule was carefully limited to personal estate, and therefore the argument of Lord Justice Turner, founded on the difficulty of applying the limitation to real estate, falls to the ground. What countenance, then, does the language of the Succession Duty Act give to the application of a different rule to succession duty? The material words in the 2nd section are, "Every past or future disposition of property, by reason whereof any person has or shall become entitled to any property upon the death of any person, and every devolution by law" [by what law?] "of any interest in property upon the death of any person to any other person, shall be deemed to have conferred a succession;" "and the term 'predecessor' shall denote the settlor, &c." Here is as abundant reference to persons as in the Legacy Duty Act, and the only difference between the two acts, as to their scope, is, that one is confined to testamentary and intestate successions, and the other extends to settlements—that it also extends to real estate is beside the question—the Legacy Duty Acts do the same. As was said in *Thomson v. The Advocate-General*, some limit must be put to the generality of the enactment. It cannot be meant to charge the duty on a succession by a Frenchman to French rentes bequeathed by a Frenchman domiciled in France, and hardly, we should think, to charge Bank Consols bequeathed by a French testator, whether to a Frenchman or to an English-

man. What limit, then, can be suggested, with any show of reason, other than that by which the operation of the Legacy Duty Acts is bound—the domicile of the person who creates the succession? We are satisfied that it will be found impossible in practice to apply the construction put upon the act in *Re Wallop*.

REPORT OF THE CHANCERY FUNDS COMMISSIONERS.

HER Majesty's Commissioners appointed to inquire into the constitution of the Accountant-General's department of the Court of Chancery, the forms of business in use therein, and the provisions for the custody and management of the stocks and funds of the Court, have made their Report, dated the 17th day of February, 1864, which has been presented to both Houses of Parliament by command of her Majesty. The Report is long and elaborate, and deserves a careful perusal. The following is a summary of recommendations contained in the Report, and is appended to it:—

AS REGARDS THE ACCOUNTANT-GENERAL'S OFFICE, AND THE FORMS OF BUSINESS IN USE THEREIN.

As regards the Financial Department of the Court of Chancery generally, and the Constitution thereof.

1. That the act of the 12 Geo. 1, c. 32, should be repealed, and that the Accountant-General's Office should be re-constructed under General Orders to be issued by the Lord Chancellor.

2. That a standing committee consisting of certain officers of the Court of Chancery should be appointed by the Lord Chancellor, whose duty it should be to consider any suggestions that may be made for improving the mode of transacting the business of the office, and to report to the Lord Chancellor, at least once a year, whether any and what alterations should be made in the General Orders regulating the department.

As regards the Relations between the Accountant-General's Department and the Bank of England.

1. That the regulation which prevents the Accountant-General from intermeddling with the suitors' monies and effects should be preserved intact; and that the actual receipt, payment, and delivery of the monies and securities belonging to the suitors should, as heretofore, be managed by the Bank of England; but that the system of duplicate accounts should be discontinued, and that the Bank should keep the Accountant-General's account in the same manner as it keeps the accounts of its other customers.

2. That means ought to be provided for receiving money and cashing the Accountant-General's drafts, either under the same roof as the Accountant-General's Office, or in its immediate vicinity.

3. That the Bank should be remunerated for the work which it performs for the Chancery suitors by a fixed annual payment, to be from time to time settled by the Lord Chancellor and the Governor of the Bank, with the approbation of the Lords Commissioners of her Majesty's Treasury.

As regards the Relations between the Accountant-General's Office and the Report Office.

1. That the practice of filing certificates at the Report Office should be discontinued; and that certificates of transactions recorded in the Accountant-

General's books should be obtained from the Accountant-General's Office.

As regards the Relations between the Accountant-General's Office and the Registrar's Office.

1. That instead of being required to act upon the original order, the Accountant-General should be furnished with, and act upon, pay sheets or abstracts in a tabular form prepared in the Registrar's Office, for the accuracy of which the registrar should be responsible.

2. That so long as the Accountant-General is required to act upon the original order, particular attention should be paid to the suggestions contained in the Accountant-General's observations, paper No. 9, par. 2, viz. :—

(1). Every decree or order directing the payment or transfer in, or carrying over of any funds should have inserted in the body thereof the exact title of the fund, as the same is to be raised in the Accountant-General's books, and not describe the fund by reference to the title of the decree or order.

(2). Every decree or order dealing with a fund in court should have inserted in the body thereof the title of the fund from the Accountant-General's voluntary certificate, and not describe the same by reference to the title of the order.

(3). In every decree or order dealing with a fund in court containing the expressions "out of any other cash," and "out of any other Bank Annuities," the source from which the other funds are expected to come should be stated.

(4). In every decree or order directing the computation of interest, the day up to which such interest is to be computed should be named.

8. That so long as the Accountant-General is required to act upon the original order, money orders should have a distinguishing mark or stamp impressed upon them by the assistant clerk to the registrar before being left for entry; that they should be entered in registrar's books distinct from other decrees and orders, and should be consecutively numbered, and that each sheet when filled should be transmitted by the entering clerk to the Accountant-General's Office; and that the certificates of the taxing masters and of the judges' chief clerks, upon which the Accountant-General has to act (after being filed in the Report Office, and after an office copy has been made for the solicitor), should also be transmitted to the Accountant-General's Office; and that the clerk of certificates, whose duties will cease on the discontinuance of filing the Accountant-General's certificates at the Report Office, should be accommodated with a seat in the Accountant-General's Office, and that it should be his duty to make and keep an index to money orders, and to have the custody of the certificates of the taxing masters and chief clerks, and also of the sheets of the registrar's books until the end of the year, when they should be transferred to the clerk of reports.

4. That in decrees and orders made in any cause commenced since 1852, the reference to the record described in 1 Consol. Orders, 48, should be added to the title of the account to be raised.

5. That the practice of requiring the registrar's directions for the sale, transfer, and delivery of stock and securities, should be discontinued.

6. That the counter-signature of the registrar to the Accountant-General's drafts should be dispensed with.

As regards the Internal Work of the Office, and the Establishment of a System of Audit.

1. That directions to the Accountant-General in money orders, or in the pay sheets or abstracts thereof (as the case may be), should in all cases be noted by the Accountant-General; and that the Accountant-General should operate thereon, on receipt of the money order or pay sheet, unless or until a request from one of the solicitors for any of the parties or the persons interested in the cause or matter to suspend any of such directions, be left with the Accountant-General; and that directions to the Accountant-General contained in an earlier order or pay sheet, should not be superseded by directions of later date, unless specially ordered.

2. That the practice now adopted in the Accountant-General's Office in preparing drafts drawn on the Bank of England should be amended; and that every signature and counter-signature upon a draft should be evidence of examination by the person who signs; and that no draft should be signed until it is applied for by the person entitled thereto; and that every draft should be passed to account as soon as it is drawn and issued.

3. That the Accountant-General should be relieved from the duty of signing drafts on the Bank, and authorised to grant deputations to officers of his department to sign drafts under regulations to be approved by the Lord Chancellor.

4. That a system of audit should be established in accordance with the principles defined in the memorandum drawn up by Mr. Crawford and Mr. Anderson. Appendix, No. 37.

As regards the Accountant-General's Salary and Allowances, the Accountant-General's Clerks, and as regards Office Hours and Vacations.

1. That the salary of the office of Accountant-General should be fixed, on a vacancy, at the sum recommended by the select committee of the House of Commons on official salaries in 1850, viz. at 2000*l.* a year.

2. That the allowance which the Accountant-General receives to enable him to defray office expenses should cease, and that the necessary office expenses should be defrayed out of the Suits' Fee Fund, in the same manner as similar expenses for other departments of the court are defrayed.

3. That the Accountant-General should be at liberty to appoint a deputy during vacation, with the approbation of the Lord Chancellor, without remuneration; and in case of absence on account of illness at any other period of the year, to appoint a deputy, to be approved of by the Lord Chancellor, for such time as his Lordship may sanction, and to be remunerated by the Accountant-General at such rate, not exceeding one-third of his salary, as the Lord Chancellor may determine.

4. That the clerks should be divided into classes, with minimum and maximum salaries, and an annual progressive increase for length of service, according to the rule generally adopted in the public establishments; that the scale of salaries and annual increments should be settled by the Lord Chancellor, with the approval of the Lords Commissioners of the Treasury; and that the Lord Chancellor should be empowered to direct instalments of salaries and pensions to be paid monthly.

5. That the act 52 Geo. 3, c. liv (local and personal), should be repealed, and that sect. 46 of the act 15 & 16 Vict. c. 87, wherein are incorporated the provisions of the act 22 Vict. c. 26, by which the superannuation of public civil servants are regulated, should be extended to the clerks in the Accountant-General's Office.

6. That the Accountant-General's Office should be open during vacations on such days as the chambers of the vacation judge may be open, or on such days as the Lord Chancellor shall direct; that office hours during vacation should be from eleven to one; and office hours during each day the offices are open for the remainder of the year, from ten to four, except on Saturdays, when the office should be closed at two; that the office should be open during vacation on the three days next after the dividends of any Government stock in court become payable, from ten to two.

7. That the hours of attendance of all the clerks, except during vacation, should be during office hours, and in times of pressure during such farther period of each day as the Accountant-General may from time to time prescribe for the due despatch of the current business.

8. That during vacations such number of clerks should attend as the Accountant-General may consider requisite for the due despatch of the current business.

9. That in the event of any account being overdrawn, the extent to which the account may be overdrawn, and the circumstances under which the error may have occurred, should be forthwith reported by the Accountant-General to the Lord Chancellor, who should be at liberty to direct, that the amount overdrawn should be written off from the Sutors' Fee Fund; and in case such overdrawn should have occurred through the wilful neglect or default of any officer of the court, to direct that the amount so overdrawn should be made good by him, or deducted from his salary.

As regards the Operations of paying Money and transferring Stock and Securities into Court.

1. That the Accountant-General should, on a written request, without requiring the production of any order, issue his directions for the payment of money, the transfer of stock, and the deposit of securities in any cause, either to the credit of the cause generally, or to a separate account which may have been directed to be opened in the cause.

2. That the reference to the record should be inserted in the directions issued by the Accountant-General, and added to the titles of causes in the Accountant-General's books.

3. That directions should be signed by such of the clerks as the Accountant-General may from time to time appoint for the purpose, and should be ready during vacations on the same day they are bespoken, and at other times by eleven o'clock on the morning following.

4. That the person applying for the direction should write upon it the address to which he desires a formal voucher or certificate to be sent when the amount shall have been placed to the account mentioned in the direction.

5. That at the foot of the direction to pay in money or deposit securities there should be a form of receipt to be signed by the cashier of the Bank, and to be given to, and retained by, the person paying in.

6. That the Accountant-General should, on the next day but one that the office is open after the amount is paid in to the Bank, transmit by the general post to the address written on the direction, a voucher or certificate of the money having been placed to the proper account in his books.

7. That a purchaser paying into court the purchase money of an estate sold under an order of the Court, should be entitled to require that the purchase money should not be dealt with without notice to him by signing a request to that effect upon the direction.

8. That each amount paid in under the 69th section

of the Lands Clauses Consolidation Act, 1845, should be distinguished in the Accountant-General's ledgers by a distinct number, and that a separate certificate of each sum paid in under the 69th section should be issued when required, and that every order dealing with a sum paid in under that section should refer to the sum by the number attached thereto in the Accountant-General's ledgers.

9. That money should be received from, and paid to, suitors at any branch of the Bank of England.

10. That arrangements should be made with the Bank of England with a view to dispense with the attendance of the Accountant-General at the Bank for the purpose of accepting and transferring stock.

As regards Securities other than Government Securities deposited in the Court.

1. That foreign and other securities ordered to be brought into court should be deposited in the same manner as exchequer bills; and that the interest or dividends on such securities should be received by one of the cashiers of the Bank.

As regards the Operations of transferring Stock and paying Money out of Court.

1. That powers of attorney for the receipt of monies and securities in the custody of the court should be dispensed with, and that in lieu thereof there should be substituted an authority to the effect contained in the Form No. 23, in the schedule to the General Orders of the 11th November, 1862, made under the Companies Act, 1862.

2. That affidavits of residue and affidavits verifying calculations should be dispensed with, and that all calculations and apportionments (in the absence of a special direction to the contrary) should be made by the Accountant-General's clerks.

3. That statutory declarations should be substituted for affidavits verifying facts.

4. That payment of any monies to the Receiver-General of Inland Revenue, the Official Trustees of Charitable Funds, the Ecclesiastical Commissioners, the Assistant Paymaster-General, and the Solicitor to the Treasury, or any other official person for whom an account is kept at the Bank of England, should be made by the Accountant-General transmitting to the Bank a direction to write off the amount from his account to the account to which the money is to be placed.

5. That when the amount payable to any person does not exceed the amount transmissible by post-office orders, the person to whom the money is payable should be at liberty to authorise the transmission thereof by a post-office order; and that a list of the post-office orders to be issued should be transmitted daily to the Postmaster-General with a direction from the Accountant-General for the Bank to write off the total amount from his account to the account of the Postmaster-General, who should deduct from each amount authorised to be transmitted his charges for transmitting the same, as well as the postage.

As regards Transcripts of Accounts and Certificates.

1. That transcripts should be ready for delivery to the solicitors at the expiration of thirty-six hours after they had been bespoken or left to be made up.

2. That the entries in transcripts should shew the price at which stock and securities entered therein were bought or sold, and the date of the order and certificate (if any) under which any transfer or payment of money, or any carrying over therein mentioned, was made.

3. That during the month of November in each year transcripts of all accounts dealt with during the

year should be left at the Accountant-General's Office to be made up.

4. That on bespeaking or making up a transcript, a fee of 6s. 8d., if the entries exceed three and do not exceed six, or of 13s. 4d. if the entries exceed six, should be allowed to the solicitor.

5. That transcripts should be signed by one of the Accountant-General's clerks.

6. That transcripts so signed should be evidence of the contents of the Accountant-General's books.

7. That certificates should be signed by such of the Accountant-General's clerks as he may depute for the purpose, and should be ready during vacations on the same day that they are bespoken, and at other times by eleven o'clock on the following morning.

AS REGARDS THE FUNDS OF THE COURT OF CHANCERY.

As regards the Propriety of making any Alteration in the present Mode of buying and selling Stock for the Suitors.

1. That it is expedient to defer the further consideration of the question as to the propriety of making any alteration in the mode of buying and selling stock for the suitors until after the establishment of a deposit account for the suitors of the Court of Chancery.

As regards the Establishment of a Deposit Account.

1. That it is expedient to establish a deposit account for suitors' monies in the Court of Chancery, and to allow to the suitors interest at the rate of 2l. per cent. per annum upon the monies belonging to them whilst in the custody of the court; but without depriving them of the right to require the investment thereof at any time on their own behalf, and at their own risk.

As regards the Management of the Funds of the Court.

1. That measures ought to be taken at once for the purpose of relieving the Chancery suitors from the great burthen which has lately been thrown upon them by the increased expenses connected with the administration of lunatics' estates.

2. That in order that the whole income and expenditure of the Court of Chancery may be presented in an intelligible form, the balance of cash which have arisen from the income of funds A. and B., and the cash and stock on fund D., and on "the money arising by sale of the six clerks' offices," should be carried over to fund C., and that the accruing income of funds A. and B., should be paid in and placed to the credit of fund C., and that the whole expenditure of the court now charged upon the incomes of fund A. and fund B., and upon fund C., should be charged upon this amalgamated account, which might be termed the Chancery income and expenditure account.

3. That the appeal deposit account should be amalgamated with the Chancery income and expenditure account, and that appeal deposits instead of being lodged with the senior registrar should be paid into the Bank, and placed to the credit of that account, and that the repayments of appeal deposits should be made thereout.

4. That the whole amount of brokerage chargeable to suitors should be carried over and placed to the credit of the Chancery income and expenditure account, and that the broker's remuneration should be paid thereout.

5. That the Chancery income and expenditure account should be annually balanced on the 1st October (the day of annually balancing the suitors' accounts).

6. That the income tax on the salaries, pensions, and compensations charged upon the amalgamated account,

and on any other monies payable thereout liable to income tax, should be deducted by the Accountant-General, and paid over by him to the Commissioners of Inland Revenue, less the amount of income tax deducted by the Bank on the dividends of stock payable to the amalgamated account.

7. That the custody of Parliamentary deposits, under the 9 & 10 Vict. c. 20, should be transferred from the Accountant-General's department to the Board of Trade or some other public office.

8. That the provisions contained in the 16 & 17 Vict. c. 98, authorising investigations to be made into suitors' unclaimed accounts, should be varied, and that such investigations should be made on the 1st October in every year, and should be extended to all accounts not dealt with for ten years instead of being limited to stock accounts, and should also be extended to accounts where the only dealing has been the investment of dividends.

9. That at the time of annually balancing the suitors' accounts, there should be transferred to a separate ledger, and carried to the Chancery income and expenditure account, balances not exceeding 2l. on any accounts, and also balances exceeding 2l. and not exceeding 5l. on any accounts not dealt with during the preceding year, and that any amount so carried over, with any dividends accrued thereon that may be reclaimed, should be made good out of the same account.

10. That the annual balance book should be continued to be made up, and, after being signed by the chief clerk of the Accountant-General, should be deposited on or before the 1st November in each year in the Record Office at the Rolls.

11. That purchases and sales of stock on fund (A.) should be so regulated in amount as to affect the market as little as possible.

12. That all fees payable into the Suitors' Fee Fund Account should be collected by stamps.

Court Papers.

COMMON-LAW CAUSE LISTS, EASTER TERM, 1864.

Court of Queen's Bench. NEW TRIALS.

FOR JUDGMENT.
Norfolk—Coe v. Wise

FOR ARGUMENT.
Moved Trin. Term, 1862.
Tried during Term.

Midd.—Tennant v. Bankart
(Part heard, stands for arrangement)

Moved Mich. Term, 1862.
Chester—Reg. v. Lord Delamere & ors. (Part heard)

Moved Mich. Term, 1863.
Midd.—Hodgman v. West
Midland Railway Co. (Part heard)

Lond.—Crane v. London Dock Co.
— Same v. Same

Lond.—Pilgrim & an. v. Hirschfeld

— Newle v. Hooper
Bristol—Gay v. Matthews
Glamorgan—Morgan v. Vale of Neath Railway Co.

Moved Hil. Term, 1864.
Midd.—Low v. M'Gill
— Minto v. Hall

Lond.—Hughes v. Greame
— Same v. Same
— Plane v. Spink
— Larmouth v. George
— Cox v. Mayhew

Liverp.—Priestley v. Hopwood

Tried during Term.
Midd.—The Panama Leather Cloth Co. (Lim.) v. Sterne
Lond.—Thompson v. Carter.

SPECIAL PAPER.

Those marked thus * are Special Cases, and thus † Demurrers.

FOR JUDGMENT.
† Lloyd v. Ginhart & ors.

FOR ARGUMENT.
† Worthington v. Ludlow (Sp. C. to be stated)

†Gill v. Summers (St. over)
 *Ricket v. Metropolitan Railway Co.
 †Balden v. Pell
 †Parsons & ora. v. Evans
 *Gell v. Mayor, &c. of Birmingham
 *Sutton v. Spectacle-makers' Co.
 †Longhurst v. Haynes & ora.
 †Olerly & Wife v. Ryde Commissioners
 †Parton v. Hill
 †Whitehead & ora. v. Porter
 *Garnett and Moseley Gold Mining Co. of America (Limited) v. Sutton

†Harris v. Swinburn
 †Wells v. Haeon
 *Matthews & an. v. Bloxsome
 †Leatham v. Caton Union
 †Stokoe & ora. v. Hall
 *Crocker v. Waine
 *Withy v. Williams & an.
 Hunter v. Middlebrook (Ap. from County Court)
 †Moore & ora. v. Stroud
 †Mulreany v. Lord Ebury
 *Sale v. Livesey
 †Gandy & Wife v. Jubber
 †Roberts & Wife v. Roberts
 †Armitage & an. v. Barker
 †Dewters v. Townsend.

Lond.—Chapman & ora. v. Adams
 — Mallet v. Bateman
 — Alvarez de la Rosa v. Arrieta

Lond.—Alvarez de la Rosa v. Prieto
 — Gerish v. Bermstingl
 — Myers v. Froud
 — Moore v. Pawley.

DEMURRER PAPER.

SPECIAL ARGUMENTS.

Friday, April 22.

Naylor v. Mortimore (D., Special case when signed to be argued herewith)
 Vestry of St. George, Hanover-square v. Sparrow (Ap.)
 Norris v. Carrington (County Ct. Ap., to stand over for counsel to answer objection as to security)
 Wood v. Stourbridge Railway Co. (Case by arbitrator)
 Anderson v. Curtis (D.)
 M'Kenzie v. Steele (Case by order)
 Strick & ora. v. Swanses Canal Co. (Case by order)
 Ruffie v. Boyd (D.)
 Topping v. Keysell (County Ct. Ap.)
 Bayley v. Wilkinson (Ap.)
 Thomas v. Middleton (Case, Nisi Prius)

Green & an. v. Preston (D.)
 Sheppard v. Churchwardens of Bradford (Ap.)
 Tidey v. Mollett (D.)
 Bailey v. Bodenham (County Ct. Ap.)
 Cobbold & ora. v. Lyall (D.)
 Pimm v. Undershell (County Ct. Ap.)
 Cuadra v. Swan (D.)
 Leader v. Yell (Ap.)
 Wallington v. Willes (Ap.)

Monday April 25.

Gerring v. Barfield (Ap.)
 Girvin v. De Mattos (D.)
 Hopkins v. Pemberton (D.)
 Duncan v. De Mattos (D.)
 Makeham & an. v. Crow (D.)
 Dean and Chapter of Christ Church, Oxford v. Duke of Buckingham and Chandos (Case by order).

ENLARGED RULES.

First Day.

In re J. Wells
 In re E. T. Parson and W. Overell
 Reg. v. Lord Mayor and Aldermen of London

Reg. v. Justices of Sussex
 Reg. v. Bath & an.
 Reg. v. Lord and Steward of the Manor of Longhope
 Reg. v. Inhabitants of the Parish of Harlow.

CROWN PAPER.

Tewkesbury Reg. v. Severn Navigation Commissioners.
 Surrey ——— Measor. (To stand over till judgment given in the House of Lords in the Mersey Docks case).
 Norfolk ——— Middle Level Commissioners.
 Bristol Morgan v. Pope.
 Nottinghamshire Reg. v. Worksoy Local Board of Health.
 Derbyshire Bennett v. Barton.
 Cheshire Reg. v. Guardians of the Poor of the Macclesfield Union.
 Staffordshire Phipps v. Whitehouse.
 Devon Reg. v. Wilkinson & ora.
 Middlesex ——— Guardians of the Poor within the Isle of Wight.
 Durham ——— Alexandra.
 Yorkshire ——— Rogers.
 Southampton ... Sharp v. Fields.
 Devon Kiddle v. Kayley.
 Buckinghamshire Reg. v. Guardians of the Poor of the Witney Union.
 Gloucestershire.. Midland Railway Co. v. Churchwardens and Overseers of the Parish of Badgeworth.
 Lancashire London and North-western Railway Co. v. Surveyors of the Highways of the Township of Skerton.
 Surrey Knowlden & ora. v. Reg.
 Middlesex Reg. v. Horrocks.
 Lancashire Latham & ora. v. Reg.
 Yorkshire Reg. v. Local Board of Health, Madyley.
 Surrey Rapley v. Richards.
 Essex Reg. v. Overseers of the Parish of South Weald.
 Cumberland ——— Inhabitants of Great Salkeld.
 Portsmouth ——— War Department and Meade.
 Bedfordshire Churchwardens of Potton v. Brown.
 Cornwall Looe Harbour Commissioners v. Churchwardens and Overseers of the Borough of East Looe.

ENLARGED RULES.

First Day.

Williams v. Evans
 In re Brook, Delcomyn, and Badart

Jackson v. Grimley
 Sürman & an. v. Gelpescke & ora. (Goschen & ora., garnishees).

CUR. ADV. VULT.

Tobin v. Reg.
 Webber v. Stanley

Hodgson v. Little.

Court of Exchequer.

SITTINGS—EASTER TERM.

Days in Term.		Banc.
Friday	April 15	Motions and Peremptory Paper.
Saturday	16	Errors, Peremptory Paper, and Motions.
Monday	18	.....
Tuesday	19	.....
Wednesday	20	Special Paper.
Thursday	21	.....
Friday	22	.....
Saturday	23	Criminal Appeals.
Monday	25	Special Paper.
Tuesday	26	.....
Wednesday	27	Special Paper.
Thursday	28	.....
Friday	29	.....
Saturday	30	.....
Monday	May 2	Special Paper.
Tuesday	3	.....
Wednesday	4	Special Paper.
Thursday	5	.....
Friday	6	.....
Saturday	7	.....
Monday	9	.....

Days in Term.

Monday April 18 Middlesex, first Sitting.
 Friday 22 London, first Sitting.
 Monday 25 Middlesex, second Sitting.
 Friday 29 London, second Sitting.
 Monday May 2 Middlesex, third Sitting.

Nisi Prius.

Court of Common Pleas.

NEW TRIALS.

Moved Mich. Term, 1863.
 Midd.—Packer & an. v. Great Western Railway Co. (To stand till Beal v. South Devon Railway Co. is disposed of in Exch. Chamber)
 Liverpool.—Thomson v. Healey
 Surrey.—Marsh v. Conquest (Part heard)
 Moved Hil. Term, 1864.
 Midd.—Hayne v. Cummings
 — Trotman v. Wood
 — Cross v. Roberts
 Lond.—Cook v. Colebrooke

NEW TRIALS.

FOR JUDGMENT.

Moved Hil. Term, 1863.

Lond.—Kühn v. Bicker Caarten

Moved Hil. Term, 1864.

Lond.—Brady v. Oastler
(Standing for arrangement)

FOR ARGUMENT.

Moved Easter Term, 1863.

Lond.—Beavan v. Countess of
Waldegrave

Moved Mich. Term, 1863.

Liverp.—Williams v. Black-wall

—Bennett v. Maxwell.

Moved Hil. Term, 1864.

Liverp.—Brabner v. Macann
—Barker v. Barnett

—Hiltzman v. Beresford

Moved after the 4th day of Hil. Term, 1864.

Midd.—Townsend v. Senior.

SPECIAL PAPER.

FOR JUDGMENT.

Stockport Waterworks Co. v.
Potter & ors. (Sp. C., heard
8th and 9th June, 1863)

FOR ARGUMENT.

Brewer v. Dimmack (D., part
heard, standing over for ar-
rangement)

The Anglo-Californian Gold-
mining Co. v. Lewis (D., to
stand over)

Earl of Lonsdale v. British &
Irish Magnetic Telegraph
Co. (Limited) (D., to stand
over till after argument of
Sp. C.)

Young v. Stockton Corpora-
tion (Ap., part heard)

Webster v. Same (D.)

Birch v. Brayshaw (Sp. C. by
order)

Cole v. Sivell (Ap.)

PEREMPTORY PAPER.

To be taken on the first Day of Term after the Motions,
and to be proceeded with the next Day, if necessary, be-
fore the Motions.

Blackett v. Bates

| Maltby v. Law.

ERRORS AND APPEALS.

FOR JUDGMENT.

Beal & an. v. South Devon
Railway Co.

FOR ARGUMENT.

King & ors. v. Walker

Pillott v. Wilkinson

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THE JURIST.

LONDON, APRIL 16, 1864.

AN application was lately made to Mr. Justice Mellor, at chambers, by a father to obtain the custody of his child, which was detained from him by the mother, upon which his Lordship, after taking time to consider the matter, made an order in the father's favour. The subject is one so interesting in its nature, and so constantly mooted since the institution of the Divorce Court, that it will not be out of place to discuss the law bearing upon it. The case relied upon by Mr. Justice Mellor is the case of *Rex v. Greenhill* (4 Ad. & El. 625), where it is laid down that the custody of a legitimate child belongs to the father, while that of an illegitimate child belongs to the mother. In this case, the mother had removed the children, who were legitimate, from the custody of the father, on the alleged ground that he was leading an immoral life, and would contaminate them. It appeared upon the affidavits that he had formed a connexion with another woman, and had ceased to live with his wife, but he had not brought this woman to the home in which his children were. It also appeared that the mother was in every respect a proper person to have the care of her children. Thus, the case was one of a father neglecting his conjugal and parental duties on the one hand, and on the other, of a mother duly performing hers. The authorities on the point are fully gone into and considered in the arguments of counsel and the judgments of the Court, and the decision is, that as there was no apprehension of cruelty or of contamination of the children by the father, by some exhibition of gross profligacy on his part, he was entitled to have the custody of them. Although there was the illicit connexion between the father and the woman spoken of, it was not pretended that she kept the house to which the children were to be brought, or that there was anything in his conduct so offensive to decency, as to render it improper that the children should be left under his control.

This case strongly illustrates the rule of our common law on the point, viz. that the proper custody of a child, not old enough to exercise a discretion itself, is undoubtedly the custody of the father, except where the enforcement of it would be most clearly injurious to the health or morals of the child. The law takes no notice of the mother's feelings, or even of the interest of the children, who, generally speaking, at such a tender age, look more to the mother than to the father for sympathy and aid and education. In a recent case in the Divorce Court (*Cartledge v. Cartledge*, 31 L. J., P., M., & A. 84), the rule was acted upon, to the extent of ordering an infant seven months' old to be given to its father. The Judge Ordinary says, "There are certain principles to which I am bound to attend, and there can be no doubt, that by the common law the father has a right to the custody of the child. The statute has given the Court discretionary powers to make orders for the custody of children pendente lite, and these powers are the same as are given to the

Court of Chancery by the act which is commonly called Talfourd's Act (2 & 3 Vict. c. 54). That discretion I must exercise, however, keeping in view the *prima facie* legal right of the father, and to take that away the mother must establish something more than her mere maternal right."

A stronger case than this can hardly be put, for although the mother was not nursing the child, she of course was, by every law of nature, the most fitting person to have the care of it, which yet she was precluded from having unless she would live with her husband. Access to it the Court would give her, but this permission, when it could only be made available by going to the house of a husband from whom she was seeking a judicial separation on the ground of cruelty, was little more than a mockery.

The question was again very fully considered by Sir R. T. Kindersley, V. C., in the case of *In re Curtis* (reported 28 L. J., Ch., 459). There the Vice-Chancellor says—"Now, that this Court will exercise the jurisdiction is beyond all controversy. The cases which have most frequently occurred of the Court exercising it have been cases where the father, being of a perverted condition of mind in respect of religious or moral views or habits, is inculcating such habits and views upon his children in such a way as to be most grievously and seriously detrimental to them in after life as members of society. The Court will also interfere unquestionably where the father, although he may not, by teaching or example, tend to demoralise his children, treats them with such a degree of violence, harshness, or cruelty, as to appear utterly unfit to have the conduct or management of children." His Honor then considers very minutely the facts of the particular case, which appears to have been a case, if any can be put, in which it would have been better for the children to be in the custody of their mother, and decreed that he should have it.

The law, then, is clear as to the father's rights, and is but slightly affected by the provisions of Talfourd's Act. The law, however, only applies to children of such an age as not to be considered capable of exercising a discretion as to their custody. What this age was does not appear to have been clearly settled until the case of *Alicia Race* (26 L. J., Q. B., 169), where it was held, that guardianship for nurture continues until a child has attained the age of fourteen, and that the guardian for nurture—the father, if he is alive—is entitled to the custody of the child during that period. The intellects of children may vary very much, but the Court cannot enter upon this consideration, and must lay down a rule which will be generally beneficial, although it may operate harshly in particular instances. Lastly, in the case of *Hyde v. Hyde* (29 L. J., P., M., & A. 150), Sir Cresswell Cresswell laid down the same rule:—"There are two or three cases in the books shewing, that before the age this child has attained, a child has a right to choose his own custody; but in the recent case of *Alicia Race* the Court of Queen's Bench held, that guardianship for nurture continues until the age of fourteen, and that a child has no right before that age to exercise

his own choice as to quitting or remaining in the custody of his father."

Thus the rule of law on the subject is clear and settled. The father's conduct must be very decidedly immoral, and moreover, immoral *at home*, to deprive him of the custody of his children until the age of fourteen. He may be a gambler or adulterer elsewhere than in the house where his children are living, or have other vicious habits; but unless he so acts as to be likely to contaminate them, or is so violent as to be likely to injure them, he is their guardian, and entitled to their custody; and the mother must be content with entire separation from, or only occasional access to, her children, even at their tenderest age, unless she will live with her husband.

In these days, when the facilities for divorce are so increased, this stringent rule may be a wholesome one. It may induce a mother, who would otherwise be eager to obtain a divorce or a judicial separation, to sacrifice her feelings rather than be separated from her children; and it may also induce some, who are inclined to break their marriage vows, to pause before they take the step.

As soon as the child has attained the age of fourteen, he may exercise his own choice as to living with either parent.

THE defects of the Bankruptcy Act, 1861, have at last forced themselves upon the consideration of Parliament, and, as we collect from the report of the debate on Friday, the 8th inst., are to be referred to a select committee. Whether it be from defects inherent in the act itself, or the mismanagement of those who have been concerned in carrying out its provisions, it has been a great disappointment to the public; and some of its provisions, if half that is said is true, have opened the door to a large amount of fraud. We refer especially to the unhappy 92nd section, which has, perhaps, given rise to more litigation than any other one section of any modern statute. It is said to be a very common practice to insert imaginary creditors, so as to make up the numbers requisite to bind those who dissent; and we recently learnt from the public prints that an attorney had been struck off the rolls for a fraud of this description. This, however, rather applies to the working than to the construction of this much-discussed section, and is a defect which might perhaps be cured by greater care and watchfulness, but which ought to be prevented by statutory provision, if it can be done; but who can say at this present moment what is a valid deed of arrangement, when day after day deeds framed with care, and intended to be binding under this section, have been pronounced invalid by the Courts, because they impose some inequitable term upon the non-dissenting creditors, or do not put them in the same position as those who agree to the deed? As to the great point of *cessio bonorum*, the decisions, upon the whole, are to the effect, that the section intends to make it optional with the creditors, and to leave it to their discretion whether the debtor should surrender all his property, or be allowed to retain it. But it still remains to be considered by a court of appeal;

and although it may appear to be wise and just to leave the creditors such a discretion, we apprehend that much may be said against it, and that it may be greatly abused; and we think that this is one of the questions which deserves the attention of the select committee. Lord Westbury may say that the judges have been astute to find out defects in these deeds. On the other hand, it may be said that a section containing such important provisions ought to have been penned in the simplest and clearest language, and that the quantity of litigation and argument upon the section proves that it is obscure and perplexing. We think also the committee might consider whether it was wise to retain in the Bankruptcy Act the provisions as to reputed ownership. This part of the law of bankruptcy is most harsh and unjust in its operation, and the reason for its existence, that traders obtained false credit by being the apparent owners of other persons' goods, has long ceased in practice to be a sound one. In the case of *Belcher v. Bellamy* (17 L. J., Ex., 219), Lord Wensleydale thus expresses himself:—"The spirit of modern commerce is very different from that of ancient commerce, and if the Legislature had to pass Bankrupt Acts in the present times, they would not, in my opinion, consider it just that one party should pay his debts with the goods of others. The truth is, that at the present day a trader does not gain credit from the mere fact of having a warehouse full of goods, but from his mode of dealing and his general character."

There can be no doubt of the truth and good sense of Lord Wensleydale's remarks, which, however, do not appear to have occurred to the framers of the present act. The fact that non-traders can now be made bankrupts, and that such persons may obtain a false credit by dwelling in houses sumptuously furnished, and indulging in a style of living which argues large means, does not, in our opinion, affect the question. The creditors of such persons do not generally trust to these appearances; they make inquiries about the individual before they run a large risk, and if they neglect to do so they have only to blame themselves; whereas, in commercial transactions, it may be said that the possession of a large stock of goods implies, or in former times did imply, respectability and substance.

The Attorney-General in his speech on Friday, the 8th inst., if the report of that speech is correct, hinted gently that the commissioners had not efficiently worked the act, and the necessity for a chief judge was again alleged. We are inclined to think that the appointment of a chief judge is desirable, with an appeal, of course, from his decisions to the Lords Justices or Lord Chancellor. This point will, of course, be considered by the committee, who have no easy task before them, if they intend to grapple with the whole law of bankruptcy, and all the objections which are made to the present statute. We trust that they will not shrink from the labour, and that they will at last place upon a satisfactory footing a branch of the law which involves such important interests, and is hourly in operation, and which especially requires to be clear, intelligible, and just.

Correspondence.

RE WALLOP'S TRUSTS.

TO THE EDITOR OF "THE JURIST."

SIR,—It appears to me that Lord Justice Knight Bruce thought that there was a succession in the above case from the testator William Wallop, as donor of the power of appointment; nor could his Lordship have thought otherwise, consistently, at least, with the following passage of his judgment in *Re Lovelace* (5 Jur., N.S., part 1, p. 695):—"My opinion is in favour of the Crown claiming, as it does, only a single duty—that is to say, no duty in respect of any acquisition, or supposed acquisition, of property by Mrs. Lovelace—no duty as against that lady or her estate—only a duty in respect of her execution of the power as against those, or some of those, in whose favour she exercised it." Lord Justice Turner, however, said—"The respondents also argued that the property in question ought to be regarded as the property of Mrs. Lovelace, and that her domicile having been a foreign domicile, this duty ought not to attach, and would not have attached, upon her property under the Legacy Duty Act. I can find nothing in the act which can make this property the property of Mrs. Lovelace, unless the case falls within the 4th section, and I have already stated that, in my opinion, it does not; and if the property cannot be considered as the property of Mrs. Lovelace, the principle on which the cases under the Legacy Duty Act proceed has not, as it seems to me, any application." Alas! to what inconsistency does not this perplexing act lead! In the case of *Re Wallop's Trusts*, the donor of the power died in 1856; the 4th section therefore applied, but the foreign domicile of the appointor operated nothing, in the opinion of Lord Justice Turner, whose judgment in *Re Lovelace* had probably led the parties to dispute the claim of the Crown, and the fortunate Mr. Trevor carried off once more the palm of victory. Lord Justice Knight Bruce, however, was, I think, consistent, as I believe his judgment to have been given under the 2nd section of the act, and on the ground that the payment of legacy duty by the executors of the donor of the power of appointment had not cleared the appointees, who took a succession from the donor of the power; and as the rate of duty was the same in either view, the Lords Justices could agree in the decision.

Your obedient servant,

Rolls-chambers, Chancery-lane.

G. L.

[As Lord Justice Turner, in *Re Wallop's Trusts*, expressly founded his judgment on grounds which were not taken in *Lovelace's case*, we thought, and think, that it would be rash to make any inference from the decision in the earlier case as to the considerations which led Justice Knight Bruce to that in the later case. But, indeed, his Lordship's judgment in the one case is very little more explanatory than the few words he uttered in the other. To observe, with reference to the question, whether a succession was taken by C. from A. or from B., that the Crown did not make any claim in respect of a succession taken by B., was very little to the purpose; and that the judgment proceeded on the ground of a succession under the settlement, and not from the appointor, is only to be inferred from some expressions, which, though vague, seem to be inconsistent with the only other possible ratio decidendi, namely, that the succession duty attaches whatever may be the domicile of the predecessor.

But, as our correspondent has pointed out, Lord Justice Turner was clearly committed by his expressions in *Re Lovelace* to the construction which he has repudiated in *Re Wallop's Trusts*.—ED.]

Reviews.

[Manchester Courier, April 4.]

Pollock's Practice of County Courts, with the Decisions of the Superior Courts and Tables of Fees and Costs; also Appendices containing all the Statutes, Rules of Practice, and Forms, including those relating to Bankruptcy. In Two Parts, with Tabular Indices. The Fifth Edition. By CHARLES EDWARD POLLOCK and HENRY NICOL, Esqrs., Barristers-at-Law.

[H. Sweet. 1864.]

NUMEROUS complaints having recently reached us with reference to the additional expense to which suitors in the county courts are put in order to enforce the judgments recovered by them in the case of debtors, against whom judgment summonses issue in the event of non-payment, we have referred to the new edition (the fifth) of the "County Court Practice," by Pollock and Nicol, and find, at page 98 of the appendix to part 1, rule 14, of the new "rules, orders, and forms for regulating the practice of the county courts, 1863:"—By this rule, "the costs of a judgment summons shall not be allowed against the judgment debtor, unless some order should have been made thereon," &c. It is, therefore, necessary for the suitor, in each case, to apply to the judge for "an order" to avoid being put to the extra cost of enforcing a judgment summons already issued by the court. It is only in this way that the manifest hardship of having to "throw good money after bad" can be avoided. And while we are on this subject, we desire to call attention to the admirable book now before us. It has swelled, in the course of time, from a handy manual of practice into a bulky tome. It was always distinguished for its clearness and accuracy, but since Mr. Nicol has been associated with Mr. Pollock, it has possessed, in addition to those indispensable qualities, an amplitude of information and direction in all matters within, and relating to, the county court jurisdiction, that must render it quite indispensable to both branches of the profession. In fact, no barrister nor attorney, whether engaged in chambers or in court, can be furnished with proper "tools to work with," in a compendious shape, unless he has this book at hand. It is most excellently arranged, and in this fifth edition (which is in itself an indisputable proof of great success) the facilities of reference are considerably improved, and as nearly perfect as may be. The leaves of the indices to the two parts, into which the work is divided, are of differently coloured edges to the rest, so that they can be turned to at once, which is a great advantage, when, in the course of an argument in court, cases and precedents have been referred to. Since the last edition of the book appeared, several acts have passed the Legislature, which affect the jurisdiction and practice of county courts; for instance, the 22 & 23 Vict. c. 57, limiting the power of commitment; the Bankruptcy Act, 1861; the Industrial and Provident Societies Act, 1862; the Merchant Shipping Amendment Act, 1862; the Alkali Act, 1863. By the Industrial and Provident Societies Act, the county courts have all the powers possessed by the Court of Chancery under the Companies Act, 1862, for the winding up of such societies; and the rules and forms framed under the Companies Act are, by a county court rule, made the rules which are

to be followed in the county courts. The editors have placed them in an appendix, as well as the forms which have been altered, so as to adapt them, as far as possible, for use in the county courts. Messrs. Pollock and Nicol have also carefully noted all the "cases" which affect the county court jurisdiction and practice that have been decided since the last edition of their book. They have also added notes of the judgments given by the Court of Appeal and superior courts on questions which have arisen under the Bankruptcy Act, 1861; and have inserted the County Court Bankruptcy Orders, 1863, which have only very recently come into operation, and which ought to be carefully studied by all practitioners. The editors have likewise been able to add numerous precedents and forms, some of which were only settled by the Court of Bankruptcy within a few weeks of the publication of this edition. In setting forth the sections of the recent acts, they have done a very useful thing. They have added marginal references to other statutes and sections which bear upon them, and to the rules and forms framed upon them. Again: to the rules are appended references to the sections and forms to which they relate; and to the forms, references to the sections of the acts, and rules upon which they are respectively based. In short, no diligence has been spared to make the book as practically useful as a work of the kind possibly can be. We are happy to find that the jurisdiction given to the county courts by the Customs Act, 1853; the Succession Duty Act, 1853; the Merchant Shipping Acts, 1854 and 1862; the Nuisances Removal Act, 1855; and the Copyright of Designs Act, 1858, will most probably be rarely resorted to, for the great danger now is, that the county courts will be too heavily weighted. Nevertheless, these statutes are all noticed by the editors in their introduction—which is quite a sufficient addition to labours which were already onerous, and which have been performed with great accuracy, ability, and intelligence, and which in their results are extremely valuable.

Court Papers.

EQUITY CAUSE LISTS, EASTER TERM, 1864.

** The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motioo for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

Byre v. Burmester (R., Mar. 3) *L. C.*
 Knox v. Gye (W., Feb. 13)
 Coppard v. Allen (S., Feb. 25)
 Pinkus v. Wood (Part heard, S., Mar. 1)
 Arnold v. Burrell (S., Mar. 5)
 Hutton v. Beeton } (S., Mar. 9)
 Beeton v. M'Murray }
 River Fergus Navigation and Embankment Co. v. Cahill (W., Mar. 14)
 Pryor v. Pryor (W., Mar. 14)
 Hunter v. Belcher (K., Mar. 14)
 Cawley v. Poole (W., Mar. 16)
 Greenough v. Shorrocks (R., Mar. 16)
 Spring v. Pride (W., Mar. 18)

Sampson v. Watts (R., Mar. 18)
 Anderson v. Anderson (R., Mar. 18)
 Baker v. Monk (R., Mar. 22)
 Martyr v. Lawrence (W., April 6)

CAUSES.

Baxendale v. West Midland Railway Co. (M D, part heard) *L. C.*
 Phillips v. Governor & Co. of the Bank of England *L. J.*
 Foxwell v. Bostock (Cause) *L. C.*
 Foxwell v. Walker (Cause) *L. C.*
 Foxwell v. Gaunt (Cause) *L. C.*
 Foxwell v. Berry (Cau.) *L. C.*

Before the Right Hon. the MASTER OF THE ROLLS. CAUSES, &c.

Scott v. Oakeley (D)
 Davies v. Otty (D)
 Earnshaw v. Bradbury (M D)
 Hearn v. Caffary (M D)
 Parton v. Parton (M D)
 Ormerod v. Rostron (F C)
 Markwell v. Bull (M D)
 North-eastern Railway Co. v. Bray (M D)
 Braithwaite v. Kearns (M D)
 Hendrick v. Wood (M D)
 Brown v. Simpson (M D)
 Mackintosh v. Steuart (Cau.)
 Foster v. Foster (M D)
 Reeves v. Matthews (M D)
 Buckingham v. Whitta (M D)
 Markwell v. Markwell (M D)
 Gamble v. St. Helens Canal and Railway Co. (M D)
 Simpson v. Brown (M D)
 Maw v. Pearson (F C)
 Radcliffe v. Rushworth (M D)
 Jarvis v. Jarvis (F C)
 Bromley v. Williams (M D)
 Cooksey v. Cooper (M D)
 Coster v. Kingston (Cause)
 Overman v. Overman (M D)
 Pulling v. London, Chatham, and Dover Rail. Co. (M D)
 Davis v. Davis (Cause)
 Fish v. Woods (M D)
 Rich v. Whitfield (M D)
 Viscount Palmerston v. Turner (M D)
 Taylor v. Meads (Cause)
 Haig v. Cooper (M D)
 In re Silcock } (F C, from
 Hutton v. Hutton } chmb.)
 Johnson v. Bainton (Cause)
 Brown v. Spittle (M D)
 Ellis v. Stow (M D)
 Bonfield v. Grant (Cause)
 Wilson v. Atkinson (M D)
 Wilcoxon v. Wilkins (M D)
 Franklinski v. Sir Wm. Ball (M D)
 Watson v. Watson (Cause)
 Winter v. Easum (M D)
 Carr v. Jackson (M D)
 Hosegood v. Haine (M D)
 Rayner v. Taylor (M D)
 Wrigglesworth v. Abbott (M D)
 Ackland v. Smart (Cause)
 Bean v. Brady (M D)
 Howell v. Harper } (F C)
 Fulford v. Grice }
 Teesdale v. Sanderson (M D)
 Staite v. Bennett (M D)
 Hume v. Laidlaw (M D)
 Myers v. Greaves (M D)
 Hoddell v. Pugh (Cause)

Mattingly v. Stacey (Cause, witnesses to be cross-exd.)
 Watts v. Watts (Cause)
 Lady Seaford v. Berkeley (Sp C)
 Saunders v. Evans (M D)
 Groom v. Hughes (M D)
 Duncombe v. Buak (F C)
 Gregory v. Patchett (Cause)
 Triscott v. Brown (F C)
 Att.-Gen. v. Hospital of St. John, Bedford (M D)
 Shepherd v. Allen (Cause)
 Coventry v. Coventry (M D)
 Taylor v. Forbes (M D)
 In re Stears } (F C, adj.
 Curtois v. Stears } from ch.)
 Moet v. Couston (Cause)
 Bennett v. Dallen (M D)
 Login v. Princess of Coorg (F C)
 Newton v. Halse (F C)
 Baker v. Pritchard (M D)
 Burr v. Deane (F C)
 Davis v. Turvey (F C)
 Griffiths v. Gethin (M D)
 Grooms v. Sporne (Cause)
 In re Seaward } (F C, adj.
 Wyburd v. Tuna- } from
 ley } chmb.)
 Firth v. Ridley (M D, witnesses to be cross-examin.)
 April 13
 Smith v. Guire (M D)
 Seton v. Sullivan (F C)
 Fawcett v. Day (M D)
 Burgess v. Irwin (M D)
 Forster v. Ridley (M D)
 Pursord v. Emery (M D)
 London & Westminster Wine Co. (Limited) v. Wright (M D)
 Gwynne Holford v. Roche (F C)
 Crane v. Wynne (F C)
 Thomas v. Mackenzie (M D)
 Vivian v. Browne (M D)
 Kingsford v. Wilkie (M D)
 Gunning v. Gunning (F C)
 Bloore v. Scotton (M D)
 Catley v. Sempson (M D)
 Thomas v. Wilberforce (F C)
 Machin v. Lucas (M D)
 Lewis v. Templer (F C)
 Horrox v. Fowler (M D)
 Holloway v. Holloway (M D)
 In re Fogwill } (F C, adj.
 Fogwill v. Sut- } from ch. and
 cliff } Summons)
 Winch v. Lumb (M D)
 Bell v. Miller (M D)
 Paul v. Pole (Cause).

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

CAUSES, &c.

Poole v. Adams (M D, part heard)
 In re Reed } (F C, adj.
 Pierce v. Ham- } from ch. &
 mond } Sums. to
 } very certif.)
 Shrubsall v. Schneider } (Trial
 } by
 } jury)
 Baker v. Machin (F C)

Green v. Gascoyne (F C)
 In re Sutton's Estate } (F C, adj.
 } from
 Sutton v. Rees } chmb.)
 Rackstraw v. Meacher (F C)
 Tampier v. Ingle (Cause)
 Fitzgerald v. Fitzpatrick (Cau.)
 Thomas v. Dixie (M D)
 Beeching v. Lloyd (Cause)
 Esdaile v. Neale (F C)
 Harris v. Pound (M D)

Hewitt v. Hewitt (M D)
Whittemore v. Whittemore (M D)
Jacobs v. Mayers (M D)
Greaves v. Simpson (M D)
Coventry v. Coventry (M D)
Drevon v. Drevon (F C, and Summons to vary)
Barker v. Peile (M D)

Thompson v. Templar (M D)
Bartlett v. Templar (M D)
Boyd v. Craster (M D) April 19
Ginn v. Burgess (F C)
Thompson v. Thompson (F C)
Wilkinson v. Slee (M D)
Bennett v. Bennett (M D)
Bateman v. Cook (F C).

Stapleton v. Salisbury (M D)
Martin v. Francis (M D)
Buckley v. Blackburne (M D)
Hearn v. Bannister (M D)
Pearson v. Pearson (F C)
Crossley v. Lord (F C)
Tottenham v. Emmet (M D)
Godfrey v. Whitehead (F C)
Vickers v. Todd (M D)
Smith v. Moreton (M D)
Lefroy v. Lefroy (F C)
Fletcher v. Fletcher (Sp C)
Mitcheson v. Mitcheson (F C)
Maycock v. Alleyne (F C)
Scott v. Walker (F C)
Long v. Bowring (M D)
Silverster v. Silverster (F C)

Turner v. Birkenshaw (M D)
Bothamley v. Gordon (Sp C)
Emmet v. Tottenham (M D)
Bubb v. Green (M D)
Phillips v. Phillips (M D)
Simpson v. Terry (M D)
Neves v. Wilkinson (M D)
Perrott v. Edmunds (Cause)
Burton v. Granger (M D)
Twynam v. Hudson (F C)
Haworth v. Haworth (M D)
Howard v. Howard (M D)
Redman v. Gregory (M D)
Harrison v. Collinson (Cause)
Stares v. Penton (M D)
Barnett v. Smith (F C)
Wilson v. Boger (M D).

Before the Vice-Chancellor Sir JOHN STUART.

CAUSES, &c.

Young v. Pernie (Trial without a jury, part heard)
Young v. Pernie (Cause)
Jenner v. Akerman (D)
Kimberley v. Kimberley (F C)
Willson v. Featherstone (F C)
West v. Borrett (M D)
Lowndes v. Norton (M D)
Spirett v. Willows (Cause)
Johnson v. Stavert (M D)
Lawless v. Thunder (M D)
Keats v. Hower (M D)
Brooke v. Hickes (M D)
Robertson v. M'Alpine (F C)
In re Brooke's Settlement
Petition of R. Harding & ors. } (Ptn of right)
Cade v. Newton (F C and Ptn)
Anisley v. Canaan (M D)
Pavey v. Pavey (M D)
Crom v. Clifford (M D)
Ingham v. Ingham (M D)
Archer v. Alp (M D)
Buchanan v. Percy (M D)
Hutchison v. Holmes (M D)
Walker v. Kenrick (M D)
Dames v. Ward (Cause)
Ihler v. Davies (F C, Ptn in Daveson v. Battine)
Weir v. Weir (M D)
Prowett v. Prowett (M D)
Malpas v. Peake (M D)
Clark v. Clark (M D)
Sporie v. Barnaby (Cause, Ptn)
Jamieson v. Chater (M D)
Banner v. England (Cause)
Scholey v. Lee (Cause)
Corner v. Okey (M D)
Frankum v. Harford (F C)
Gaskoin v. Millward (M D)
In re Whitehead } (F C, from chamb.)
Godfrey v. Whitehead
Eldell v. Smith (Cause)
Lee v. Hamerton (M D)
Garnons v. Garnons (Cause)
Adams v. Hedden (Cause)
Curtis v. Graham (M D)
Garner v. Garner (M D)
Beasley v. Attenborough (M D)
Bartley v. Bartley (Sp C)
Tiffin v. Parker (Cause)
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THE JURIST.

LONDON, APRIL 23, 1864.

It must have occurred to every person who watches the statutes which are passed in each session of Parliament, how often it happens that a statute, which seems to have been passed because the public interests and necessities required it, becomes as soon as it is passed a dead letter, and is never, or but seldom, called into operation, and thus only burthens the statute book. Thus, in the session of 1857 an act was passed (20 & 21 Vict. c. 57), intituled "An Act to enable Married Women to dispose of Reversionary Interests in Personal Estate;" which contains the same provisions for enabling married women to convey away such interests without the concurrence of their husbands as those which are contained in the 91st section of the Fines and Recoveries Act, 3 & 4 Will. 4, c. 74. Our readers are no doubt aware that a married woman may, on satisfying the Court of Common Pleas by affidavit, that her husband is lunatic, idiot, &c., obtain an order from that Court to dispense with the concurrence of her husband in the conveyance. Now, it would have seemed probable, that this provision in the more recent statute would have been acted upon by married women as often as the similar provision in the Fines and Recoveries Act; but it is matter of experience, that an application by a married woman to convey her future interest in personalty is hardly, if ever, made to the Court of Common Pleas. Those who suggested the necessity of the statute must be surprised at the little use that has been made of it.

Again: in the year 1861 an act was passed (24 Vict. c. 11), intituled "An Act to afford Facilities for the better Ascertainment of the Law of Foreign Countries when pleaded in Courts within her Majesty's Dominions." This would have seemed likely to be a most useful statute, inasmuch as everybody who practises in our courts knows that foreign lawyers, when put into the witness-box, differ from each other in their opinions, on a question of foreign law, as widely as any other class of scientific witnesses do. As was observed by Sir C. Cresswell in his judgment in *Crispin v. Dogliani* (32 L. J., P., M., & A. 109), "The difficulty of arriving at a correct conclusion as to foreign law, at all times great, is much increased when experts are examined, and give conflicting testimony, for the Court has no means of ascertaining the comparative merits and learning of the witnesses."

There being, therefore, this difficulty of ascertaining satisfactorily the law of a foreign country on any question arising in our courts, this provision, enabling parties to seek the law at the fountain head, was sound and sensible, and yet we are not aware of a single instance in which the statute has been called into operation. It may be, that in countries with which we have much intercourse, the provisions of the statute are unnecessary, as their law on any point can be found in their codes or text-books; and that in countries with which we have but little intercourse, there would be considerable difficulty, and delay and

expense, in working the act; and after all, the judgment of the particular Court, whose opinion would be requested, might, from the constitution of the court, not be very reliable. Whatever the reason may be, we believe that, at all events, it is the fact, that this statute, which somebody must have considered was urgently required, is at present a useless addition to the statute book.

In the session of 1862 two acts were passed, which some persons supposed would greatly affect the transfer of, and title to, land—the 25 & 26 Vict. c. 53, "An Act to facilitate the Proof of Title to, and the Conveyance of, Real Estate," and the 25 & 26 Vict. c. 67, "An Act for obtaining a Declaration of Title." It may be premature to say that these statutes are useless, as so short a time has elapsed since they were passed; but we understand it to be the fact, that instead of the public rushing to the offices established under their provisions to avail themselves of the benefits conferred by them, those offices are occupied only by the individuals who receive salaries for a readiness and willingness to do their duty when called upon.

Again: we find in other statutes particular provisions which would seem to have been passed because a necessity was felt for them, and which yet are seldom, if ever, applied; for instance, in the 2nd section of the Mercantile Law Amendment Act, 1856, there is a provision that, in actions brought for breach of contract to deliver specific goods, the judge shall have power to order the defendant to deliver the goods themselves, on payment of such a sum as the jury shall find the plaintiffs liable to pay for them. We are not aware that plaintiffs ever ask for an order under this section, which could always be defeated if it were made, by the defendant putting it out of his power to deliver the goods.

Statutes also are passed which are, beyond a doubt, most beneficial, if properly worked, but which become virtually inoperative by reason of the facilities afforded of defeating their provisions. Thus, the Summary Procedure for Bills of Exchange Act, 1855, "An Act to facilitate the Remedies on Bills of Exchange and Promissory Notes, by the Prevention of frivolous or fictitious Defences," was in principle a most useful statute; but in consequence of the ease with which defendants make affidavits that they have a defence on the merits, the provisions of the statute are rendered nugatory. These affidavits are as much a matter of course as the common affidavits of merits. It may be said that the judge who gives leave to a defendant to appear upon such an affidavit cannot help himself; that it is not for him to say that the defendant is a perjurer, and that the plaintiff must prosecute him if he thinks he is; but prosecutions for perjury are not a pleasant task, nor are they likely to expedite the recovery of the sum due on the bill or note. There is certainly a difficulty in saying what should be done to make the statute work, but we think that everybody who has had much experience in issuing writs under its provisions will agree with us in saying, that virtually it has done no good, and that it has not prevented frivolous or fictitious defences to actions on bills and notes.

It may be asked, what harm a statute which is never worked can do to anybody; it lies sleeping quietly in the statute book, and there it may rest for ever; but some lawyers think it right to make themselves acquainted with the legislation of each session; and they have quite labour enough in mastering those acts which are brought into operation, and which they have to consult in the course of their practice. It is hard upon them to be also compelled to study a composition which they may as well forget as soon as they have read it. It is possible that acts of Parliament are too hastily suggested and enacted. The Legislature has endeavoured of late years to prune and curtail the enormous size of our statute book; and we venture to think that it ought on the same principle to abstain from passing any statute, the necessity for which is not clear and imperative. The two acts to which we have referred, the Land Transfer Act and the Declaration of Title Act, are at present a laughing-stock to the profession and the public. They had been talked of for years, were to work wondrous changes, and to destroy conveyancing; and at present we can only apply to them Lord Westbury's quotation in his judgment in *The Alexandra case*—"Parturiunt montes, &c."

The first statute which we have mentioned seemed one likely to be frequently put into practice, and was supplemental to the corresponding provisions in the Fines and Recoveries Act. There is no reason to complain of its being passed. The second, passed for the better ascertainment of the law of foreign countries, is neat and ingenious in its design; but there must have been so many difficulties, and so much delay and expense in working it, and probably also dissatisfaction and doubt felt in any case in which it was put into practice, that we can hardly suppose there was ever much hope of any good resulting from it.

Experimental legislation is hardly advisable, unless there is some great evil to be attacked, and the best mode of attacking it can only be matter of speculation. Still less is it advisable to legislate for a particular case which may never occur again. The statute book is quite large enough, and need not to be encumbered by statutes which are useless. We have mentioned only a few of such statutes; but we feel confident that if the statutes passed during the last ten sessions were looked through, several others would be found which have never been called into operation, and have quietly dropt into oblivion.

THE different plans for new law courts will, it seems, be again discussed.

No doubt, something ought to be done soon. The Lord Chancellor's plan of having the new courts located between the Temple and Lincoln's-inn seems to be in every respect the best; for there can be little doubt that it will be not only most convenient to solicitors and the bar that the courts should be placed on a site easily accessible to them, but there is also a great advantage in having them all under one roof.

The Benchers of Lincoln's-inn, who, we believe,

candidly admit that they are interested parties, are about to agitate their scheme for building separate equity courts within the Inn. Their organ in the House of Commons, Mr. Selwyn, has given notice of a motion to ask whether the Government intends to accept the offer made by the Society of Lincoln's-inn in 1859, and since repeated, viz. either to give the ground necessary for the erection of courts for the Vice-Chancellors, or to build such courts at the expense of the Society, upon receiving, for a term of years, 4l. per cent. per annum on the actual outlay on the buildings from the Suitors' Fund, but without any charge upon, or guarantee from, the national exchequer.

The plan of the Benchers seems, however, to be but a makeshift of a very imperfect character, for even the equity courts would not be under the same roof, and one of them, the Rolls, would still remain at a most inconvenient distance from the others.

In the meantime, however, much inconvenience is suffered and injustice done by matters remaining as they are.

Two of the Vice-Chancellors are daily sitting in courts—mean, ill-ventilated, and unhealthy; and the persons whose property it is proposed to take in order to carry out the Lord Chancellor's plan are suffering losses from delay and uncertainty which cannot readily be calculated.

Whatever may be the result of the deliberations of Parliament, it is to be hoped that the public interests will be alone considered, both in the selection of the site, and, what is almost as important, in the choice of the architect, and that we shall eventually have in the metropolis courts of justice of which the country may be proud.

Rebibo.

Addison on Wrongs and their Remedies. Second Edition.
[Stevens, Sons, & Haynes.]

THE relations of men to each other in our present complicated state of society are so varied, and the different kinds of property which they may possess so numerous, that the wrongs which may be inflicted by one man upon another, and for which the law affords redress, in respect of these relations and classes of property, are almost countless. It is, therefore, a bold undertaking to write a book professing to embrace the whole subject of these wrongs and remedies; and we think that Mr. Addison must have felt some fear lest, by publishing his work on torts, he should endanger the character which his previous work on contracts had deservedly established for him, of an able, learned, and painstaking author. But his fears, if he felt any, were groundless. His second work has only added to the reputation which the first had acquired, and has supplied the profession with a treatise on the whole law of torts, the want of which has long been felt. For although, in the Abridgments of Nisi Prius, and other works previously published, the several branches of this head of law were treated of, still a book was wanted which either in itself contained, or directed the reader where to look for, the law upon any wrongful act done by or to himself, or in respect of which he was desirous generally of obtaining information. Mr. Addison's book supplies the want, comprehending, as it does, almost every class of torts which man is capable of committing. In fact, he may say of it what Juvenal says of his own composition, "Quicquid agunt homines nostri est farrago libelli." Not that we mean to insinuate that the book is a "medley," which might be inferred from the use of the word

"farrago;" on the contrary, upon the whole, the matter is well and carefully arranged, and, by the help of the headings to the chapters, and a good index, any particular part of the subject may be easily found.

Each chapter, embracing a particular class of torts, is complete in itself. The first chapter explains what is an actual wrong, and the subsequent chapters each take a particular class of torts, and exhaust that division of the subject. In so concise a review of the work as we are compelled to make, it would be impossible to detail all its merits—one, and that by no means an insignificant one, is, that the style is easy and fluent, and that we can suppose even those who have a prejudice against lawyers and law books, taking an interest in the perusal of it; and we are clearly of opinion, that any educated person may acquire from the study of it sufficient information as to his rights and liabilities as a member of society.

It is said that a little law is a great evil; this may be true, if the meaning of the expression is, that it is an evil to have an imperfect and glimmering knowledge of what the law is. It can be no evil to a man to understand well and clearly a certain number of rules of law, only because there are many others which he does not know. Now, we consider that Mr. Addison's book will teach any man of moderate abilities a considerable amount of legal knowledge, which will be useful to him, and guide him in his way through life. Few men do not commit torts. It has not been our lot to meet with such gifted beings. They, of course, do not require to read the book, but to ordinary mortals it certainly may be useful.

In some trifling points we think the arrangement of the subjects might be improved—for instance, we do not understand why the subject of injuries by ferocious animals is coupled with injuries to realty. The connexion is not obvious. This, however, is a trivial defect, if any.

We also think that the omission to treat of one class of torts, viz. infringements of patent rights, is a mistake, especially as the book does treat of the kindred subject of copyright.

This omission must have been intentional, but we do not understand the reasons for it, and should have thought that a chapter on a subject which takes up so much of the time of the Courts, would have added to the completeness of the work.

The author has made some valuable additions in the second edition, which are noticed in the Preface, and to which he has evidently devoted great care and labour. Upon the whole, we consider the work as a most valuable addition to legal literature, and as one, not the smallest merit of which is, as we have already observed, that it is easily intelligible, not only to the lawyer, but to the general reader—in fact, to any person who may wish to know what his rights are in any case in which he considers he has sustained a wrong, or his liabilities in any case in which he suspects he has done one.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, April 14.

The report of amendments on the Settled Estates Act Amendment Bill was brought up and agreed to.

Their Lordships went into committee on the Punishment of Rape Bill.

Lord Wensleydale moved an amendment in the first clause, rendering the act compulsory instead of optional.

After a debate,

The Earl of Carnarvon said he would bring up a new clause on the report.

The remaining clauses were then agreed to, and the bill

passed through committee, and was ordered to be reported on Monday.

The report on the Charitable Assurances Involment Bill was brought up and the amendment agreed to.

Friday, April 15.

The Settled Estates Act Amendment Bill was read a third time and passed.

The Charitable Assurances Involment Bill was also read a third time and passed.

Monday, April 18.

The Union Relief Aid Acts Continuance Bill and the Lands Drainage (Provisional Orders) Bill were read a second time.

The Vestry Cess Abolition (Ireland) Bill was read a third time and passed.

Tuesday, April 19.

The Duke of Marlborough moved the second reading of the Land Securities Company Bill.

Lord Redesdale opposed the second reading. This was simply a money-lending company, and there was no public object involved in the measure. The transactions of such a company ought to be regulated by public law, and not by private legislation.

After some discussion,

Lord Redesdale, in withdrawing his amendment, said, if the provisions of the bill were right, they ought to pass as a public, and not as a private, measure.

The bill was read a second time.

On the report of an amendment in the Punishment of Rape Bill,

The Earl of Carnarvon moved the omission of the proviso at the end of the first clause, so as to make it a special clause in the bill, and moved to insert a clause, placing in the hands of the judge the discretionary power of whipping, where the offender was convicted of an intent to commit the crime. In doing so, the noble Earl said their Lordships would doubtless remember, that at the last stage of the bill a change was introduced, rendering it compulsory on the judges to award the punishment of whipping where a person was convicted of the crime. He was anxious to leave the discretion, as far as possible, in the hands of the judge, especially as in other respects the judge must have that discretion, and would move the amendment of which he had given notice.

After a short discussion, the amendment was agreed to, and the report was received.

The Lord Chancellor, in moving the second reading of the Improvement of Land Act (1864), explained, that it consisted of two great divisions; and the first one embodied all the provisions that had been found most beneficial in the numerous Drainage Acts; but the present bill extended very largely the purposes of those acts.

After a few words from Lord Bernal and the Marquis of Bath in approval of the principle of the measure, it was read a second time.

The Union Relief Aid Acts Continuance Bill, and the Land Drainage Provisional Orders Bill, passed through committee.

HOUSE OF COMMONS.—Friday, April 15.

Sir J. Pakington asked the Secretary of State for the Home Department what were his intentions in regard to two subjects which were now exciting great interest. Whether he intended to introduce a bill for the amendment of the Highway Act; and whether he would bring in the bill he promised for the improvement of discipline in county and borough prisons.

Sir G. Grey said the bill regarding highways was in print, and would be soon introduced. With regard to the other measure, he was waiting to receive the report of medical men as to the dietary of borough prisons before he completed the provisions of the bill.

Mr. A. Mills asked the First Commissioner of Works whether the Government had abandoned the intention of introducing any measure for the concentration of the Courts of Justice. The owners of property on the proposed site had been kept in suspense for three years, and one owner of seventeen houses, who had previously an income of something like 2000*l.* a year, was now almost reduced to beggary by the indecision of the Government.

Mr. Cooper.—Her Majesty's Government have not aban-

doned the subject. It is now under consideration, and I hope will shortly be brought forward.

Mr. A. Mills.—During this session?

Mr. Cowper.—Yes.

The County Courts (Ireland) Bill passed through committee pro forma, for the insertion of amendments.

The Common-law Procedure (Ireland) Act (1853) Amendment Bill passed through committee.

Mr. Scholfield obtained leave to bring in a bill to amend the law of partnership, and the bill was introduced accordingly.

Sir C. Wood obtained leave to bring in a bill to confirm the appointment of *Mr. Henry Pendock St. George Tucker*, as one of the judges of her Majesty's High Court at Bombay, and to establish the validity of certain proceedings therein, and the bill was introduced.

Monday, April 18.

Mr. Disraeli moved a resolution as follows:—"Notice having been taken by a member of this House that more than four Under-Secretaries of State have been sitting and voting in this House some time during this present session; resolved, that the provisions of the 21 & 22 Vict. c. 106, s. 4, have been violated, and that the seat of the fifth Under-Secretary of State has been and is thereby vacated."

Lord Palmerston admitted that the law had been violated, and said that he should propose the passing of a bill of indemnity.

The Attorney-General, admitting the truth of the former part of the resolution, which he could not object to being placed upon the records of the House, said he contended that the latter part, which declared the seat of the noble lord the member for North Lancashire to be vacated, was, in his opinion, entirely unwarranted by the act of Parliament, and was not supported by any legitimate inference from the language of other acts, and it did not become the House to adopt it.

Mr. Walpole supported the motion.

Sir G. Grey moved, as an amendment to the latter part of the motion, "that a select committee be appointed to inquire whether the Under-Secretary of State, who was last appointed to that office, has thereby vacated his seat."

The motion, as amended, was afterwards agreed to.

The House sat in committee upon the Penal Servitude Acts Amendment Bill.

Clauses 1, 2, 3, 4, and 5 were agreed to.

Mr. Hunt proposed to add at the end of clause 5—"If any holder of a license granted under the said Penal Servitude Acts, or any of them, who shall be at large in the United Kingdom, shall fail to report himself to the chief police station of the borough or division where he shall be on his arrival therein, and subsequently on the 1st day of each month, or shall change his locality without having previously notified the same to the police station to which he has reported himself, he shall be deemed guilty of a misdemeanour, and may be summarily convicted thereof, and his license shall be forthwith forfeited by virtue of such conviction."

After a debate, the committee divided—

Ayes 140

Noes 120

Majority —20

The remaining clauses were agreed to, and the bill passed through committee.

The High Court at Bombay Bill and the Court of Chancery (Despatch of Business) Bill were read a second time.

The Common-law Procedure (Ireland) Act (1853) Amendment Bill was read a third time and passed.

Tuesday, April 19.

Sir C. O'Loughlin moved for leave to introduce a bill to remove certain restrictions on the negotiation of promissory notes and bills of exchange under a certain amount in Ireland, in order to assimilate the law on the subject between the two countries.

The Attorney-General for Ireland, at that late hour of the night (twelve o'clock), asked to be allowed to introduce the Court of Chancery (Ireland) Bill, and Superior Courts of Common Law (Dublin) Bill, without a statement, reserving his remarks till the second reading; but upon an objection being raised, he did not press his motion.

The High Court at Bombay Bill passed through committee.

The Court of Chancery (Despatch of Business) Bill was read a second time.

Wednesday, April 20.

The second reading of the Grand Juries (Ireland) Bill was lost by a majority of 123

The Forfeiture of Lands and Goods Bill was postponed for the Attorney-General to consider amendments.

The Chief Rents (Ireland) Bill was read a second time. The committee fixed for this day fortnight.

The Joint-stock Companies (Voting Papers) Bill was read a second time.

BILL IN PROGRESS.

ON the 15th February last *Mr. Black* asked the Secretary of State for the Home Department whether the Government intended to bring in a bill this session for consolidating the acts relating to copyright in works of literature and art. The answer of *Mr. M. Gibson* was, that the Government had no present intention of bringing in such a bill, upon which *Mr. Black* gave notice that he would do so himself.

The bill has been introduced by *Mr. Black*, and the subject is one of such importance, that we think it may be useful to give its provisions at length, in order that our readers may see what these provisions are; and any of them who take a special interest in the law of copyright as it affects either literature or art, may be inclined to suggest improvements in *Mr. Black's* bill, where they think improvement is required.

A Bill to consolidate and amend the Acts relating to Copyright in Works of Literature and the Fine Arts.

Whereas it is expedient that the several acts now in force relating to copyright in works of literature, the drama, music, and the fine arts, as well as the several acts relating to international copyright, should be amended and consolidated into one act: be it therefore enacted &c., as follows:—

SECT. 1. The several acts and parts of acts set forth in Schedule (A.) to this act annexed are hereby repealed to the extent to which such acts or parts of acts are by such Schedule expressed to be repealed.

2. Provided always, that notwithstanding such repeal of the said acts every copyright which shall be subsisting at the time of the passing of this act shall continue in force till the expiration of such copyright, and shall be the property of the then proprietor; and with regard to all offences or injuries committed against any such copyright before this act shall come into operation, every penalty imposed and every remedy given by the said acts in relation to any such offence or injury shall be applicable as if such acts had not been repealed: provided always, that nothing in this act contained shall affect, alter, or vary any right subsisting at the time of passing this act, except as herein expressly enacted; and also contracts, agreements, and obligations made and entered into before the passing of this act shall remain in full force.

3. All copyright under this act shall be deemed personal property, and be transferable by sale or bequest, and in case of intestacy shall be subject to the same law of distribution as other personal property, and in Scotland shall be deemed to be personal or moveable estate, and shall be vested in the original proprietor or his assigns for the time being, and such assigns shall have all the same rights and privileges attaching thereto as any original proprietor from whom such copyright may have been derived; and every assignment of copyright to which this act refers, and every license to use or copy by any means or process the design or work which shall be the subject of such copyright, shall be made by some note or memorandum in writing, to be signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

4. The copyright in any work of literature first printed and published in the British dominions, provided the author thereof be a British subject or be resident in the British dominions, shall be vested in such author or his assigns for the periods hereafter stated in relation thereto respectively:

The copyright in books published in the lifetime of the author shall be the property of the author or his assigns

during the term of the natural life of such author, and for seven years afterwards, or for forty-two years from the date of first publication if the latter be the longest term :

The copyright in books first published after the death of the author shall be the property of the proprietor of the author's manuscript and his assigns for forty-two years from the first publication thereof :

The copyright in a contribution to a periodical work, such contribution being composed for publication, and given or sold to the publisher, editor, projector, conductor, or proprietor of such periodical, shall be the property of such publisher, proprietor, conductor, editor, or projector during the author's natural life and for seven years afterwards, but without the right of publishing the same in a separate form, unless a consent in writing be previously obtained from the author of such contribution, or his assigns, which right of separate publication shall be vested in the author and his assigns after twenty-eight years from the first publication of his contribution in such periodical, or earlier if there be any contract, expressed or implied, reserving to the author such right of separate publication before the expiration of such twenty-eight years :

The copyright in books bequeathed or otherwise given by the author of the same, or his personal representative, to or in trust for the Universities or Colleges, shall be vested in the said Universities or Colleges for the period for which the same shall be bequeathed or given, or if not bequeathed to them for any limited period, so long as such books shall be printed only at their own printing presses within the said Universities or Colleges respectively, and for their sole benefit and advantage ; but the said Universities and Colleges shall have the right to sell their copyright in books so bequeathed, in which case the copyright shall endure only for the term given by this act to other books.

5. The copyright in any lecture, sermon, musical composition, or dramatic piece, first delivered, represented, or performed in the British dominions, not printed or published by the author thereof or his assigns, provided such author be a British subject or resident in the British dominions, shall be vested in the author or his assigns, together with the sole right of delivering, representing, or performing, or causing the same to be delivered, represented, or performed, and the sole right of printing and publishing the same, for the same term as is prescribed to the authors of a work of literature by this act, from the date of the first delivery, representation, or performance thereof.

6. The author of any work of fiction, or his assigns, shall, during the existence of copyright therein, have the sole right of converting the same, or any portion thereof, or causing the same, or any portion thereof, to be converted into a drama.

7. The copyright in any print, map, chart, or plan, first published within the British dominions, shall vest in the person being a British subject or resident within the British dominions, who shall have first engraved, or procured the same to be engraved, or in his assigns, for the same term as is prescribed to the authors of books by this act, to commence from the first publication thereof, provided the author's name and the date of first publication be printed on each print.

8. The author, being a British subject or resident within the British dominions, of every original sculpture, model or cast, painting, drawing, engraving, or photograph, or other work of art which shall be, or shall have been, made either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of this act, shall have copyright in such works of art, and he and his assigns shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such work of art, by any means and of any size, for the same term as is provided to the authors of a work of literature by this act, provided his name and the date of publication be marked on such work of art ; provided that when any sculpture, model or cast, or any painting or drawing, or the negative of any photograph, shall for the first time after the passing of this act be sold or disposed of, or shall be made or executed for or on behalf of any other person for a good or a valuable consideration, the author or artist thereof shall not produce

copies, or engravings, or photographs of the same, unless he have leave to do so, by an agreement in writing, signed by the proprietor of such work of art.

9. Nothing herein contained shall prejudice the right of any person to copy or use any work in which there shall be no copyright, or to represent any scene or object, notwithstanding that there may be copyright in some other representation of such scene or object.

10. All illustrations produced by plates, woodcuts, or other means, in any work of literature, shall be deemed a part of such work, and be the copyright of the proprietor thereof.

11. Her Majesty may, by any Order in Council, direct that the author, and his personal representatives, of any books, paintings, prints, dramatic pieces, musical compositions, articles of sculpture, engravings, and other works of art, to be defined in such Order, which shall, after a future time to be specified in such Order, be first published, produced, performed, or represented in any foreign country to be named in such Order, shall have the privilege of copyright therein, or sole liberty of representation or performance, as the case may be, within the British dominions, for the same period as is granted by this act to the authors of the like productions first published, produced, represented, or performed in the United Kingdom, unless limited to any shorter period by such Order ; and her Majesty may, by any further Order or Orders in Council, from time to time revoke, alter, or vary any such Order or Orders, or make any other Order or Orders in relation thereto, and in lieu thereof, with similar power to revoke, alter, or vary the same.

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14. In the event of hostilities occurring between Great Britain and any of the States with which an international treaty on copyright shall subsist, such hostilities shall not be deemed to annul or render nugatory such treaty, which shall remain in full force in time of war as in time of peace.

15. Registers for the registration of the proprietorship in any copyright of works of literature, right of representation or performance, permitted by this act to be registered according to Form No. 1 in the Schedule (B.) to this act, and also of any assignment or license affecting the same, according to Form No. 2 in Schedule (B.) to this act, shall be kept at the Hall of the Stationers Company in London by the registrar. Where the author or proprietor is not certain of the day of publication, he may insert the year only, in which case the copyright shall run from the 1st January of that year.

16. There shall also be kept at the Hall of the Stationers Company a book or books, intitled "The Register of Proprietors of Copyright in Sculpture, Paintings, Engravings, Drawings, and Photographs, and other Works of Art," wherein shall be entered a memorandum of every copyright of such works of art, and also of every subsequent assignment of any such copyright, according to the Forms No. 1 and No. 2 in the Schedule (B.) to this act ; except that the forms of entry may be varied to meet the circumstances of each case, with a short description of the nature and subject

of the work registered, and in addition thereto, if the person registering shall so desire, a sketch, outline, or photograph of the said work; and no proprietor of any such copyright shall be entitled to the benefit of this act until such registration, and no action shall be sustainable nor any penalty be recoverable in respect of any infringement of copyright before registration; and that the sum to be demanded by the officer of the said Company of Stationers for making any entry of sculpture, paintings, engravings, drawings, and photographs, and other works of art, shall be 2s. 6d.

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18. The officer appointed for registration shall furnish annually to the Comptroller of her Majesty's Stationery Office, for publication, the following particulars, viz.—

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(To be continued).

We regret very much to announce that Mr. Henry Mills, Q. C., who lately succeeded Sir Mordaunt Wells, as one of the Puisne Judges of the Supreme Court at Calcutta, died a few days after landing.

James Cormack and James Oliphant Fraser, Esqs., have been appointed members of the Legislative Council of the island of Newfoundland.

THE ALEXANDRA.—This vessel has been handed over to her owners by the Government.

ROMAN CATHOLIC CHAPLAINS FOR MIDDLESEX PRISONS.—The magistrates of Middlesex held a meeting at their Sessions House, Clerkenwell, Mr. Pownall in the chair. The principal business before them was the question of appointing a Roman Catholic chaplain for the county gaols. Mr. P. N. Laurie, in a very lengthened speech, moved that provision be made for the regular ministration of a minister or ministers for the Roman Catholic prisoners, and that it be left with the visiting justices to define their duties, and fix the remuneration. Mr. Cox moved, as an amendment, that permission be given to a Roman Catholic clergyman to visit the prisoners of his persuasion at proper reasonable times, and at a fixed remuneration; but this amendment was negatived by a large majority. Mr. Serjeant Payne then moved another amendment, to the effect that there was no necessity for changing the system now adopted in the prisons; and on this amendment a division took place, when seventy voted for it, and only twenty-four for the original motion, which was consequently lost.

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THE JURIST.

LONDON, APRIL 30, 1864.

WHATEVER opinion may be entertained with regard to the Lord Chancellor as a legislator, all persons must admit his unrivalled powers as an advocate.

If any one was ever disposed to underrate those powers, the defence of his Lordship against the onslaught of Lord Chelmsford on the Land Transfer Act, and its operation, must have shewn them their error.

The Lord Chancellor admits the limited success hitherto obtained by the act, but he attributes it to the solicitors, who, he observes, not only prophesied that the act would not work, but naturally exerted all their influence to fulfil their own predictions. His Lordship described, most humorously, the solicitor, not only as dwelling on every estate, but as sinking upon the shoulders of the proprietor, guiding and controlling him in all things—like the old man of the sea, never to be shaken off. This description evidently tickled the fancy of the House, and naturally produced cheers and laughter.

His Lordship, having pointed out how slowly certain acts, such as the Copyhold Enfranchisement Act of 1841, came into operation, prepared the House to believe that similar success might in time attend the Land Transfer Act, when its merits became known to landed proprietors, and they could no longer be hoodwinked or misled by interested parties.

We cannot but think that his remarks upon the Copyhold Enfranchisement Act of 1841 are scarcely in point, for had that act not been materially altered and amended by subsequent acts, its operation would still have been as confined as that of the Land Transfer Act.

By the act of 1841, the enfranchisement of copyholds was *voluntary*; by a subsequent act, the 15 & 16 Vict. c. 51 (the Copyhold Act of 1852), enfranchisement may be *compelled, either by the lord or the tenant*, after the next admittance on or after the 1st July, 1853.

The success of the Enfranchisement Acts was undoubted after 1853, but the reason of the success was, that enfranchisement was no longer a voluntary act, but might be made compulsory either by the lord or the tenant.

Now, under the Land Transfer Act, applications for registration of title may be made by the following persons:—1, the owner of the fee-simple; 2, persons who collectively are owners of the fee-simple, or have the power of acquiring the same; 3, persons who have the power of appointing the fee-simple; 4, trustees for sale of the fee-simple; 5, the owner of the first estate of freehold, and the first vested estate of inheritance; 6, any purchaser of a fee-simple *where his contract empowers him so to do, or the vendor consents*; 7, any person authorised by the Court of Chancery to make such application.

The act, therefore, is not compulsory upon any one; it can only be put into operation by the owner or owners of the estate, or those who have certain powers

over it. It is not likely, therefore, unless such persons feel they would derive some great benefit from so doing, that they will apply for registration.

If the Lord Chancellor had made registration compulsory on *every sale* after the act came into operation, at the option either of the vendor or purchaser, or if he *could* now by an amending act introduce such an alteration in the provisions of his measure, we might, doubtless, expect the same increase of business, and from the same cause as that which took place under the Copyhold Enfranchisement Act, after enfranchisement was rendered compulsory at the option either of the lord or the tenant; but until some such amendment takes place, the progress of the Lord Chancellor's favourite measure must, we think, be slow.

Up to the present time the only persons who seem to have taken advantage of the act, have been those who were about to sell land in lots for building purposes.

None of our large landed proprietors have yet appeared within the precincts of the land court in Lincoln's-inn-fields. What keeps them away; is it, in reality, the family solicitor—typified under the by no means complimentary figure of the old man of the sea, by our "jocund" Lord Chancellor? Is it wilful ignorance of the benefits which would be conferred upon them and their estates, by invoking the aid of the provisions of the 25 & 26 Vict. c. 53? Or, finally, are they well advised in keeping out of the hands of the registrar, preferring even the tender mercies of the family solicitor, and his inevitable bill, to the dread of what may be even worse?

No doubt solicitors, as a body, do not like changes in the law which affect their own interests, and in this they are not unlike the rest of the world, except perhaps, those who have always occupied, or who have attained, such a station as to render them disinterested, or, at any rate, unprejudiced against changes which do not affect themselves. We are not, therefore, surprised that solicitors generally have rather thrown their influence against, rather than in favour of, the Lord Chancellor's measure. And the Lord Chancellor, like Cromwell, may complain that the "sons of Zeruah" have been too strong for him. Perhaps they may in time be gained over by the new system of remuneration to which his Lordship alludes in his speech.

But influential as solicitors are, surely all landed proprietors are not completely under their influence. Nor are they all so ignorant, that if a great boon were offered to them which would increase the value of their estates, they would continue obstinately to refuse to accept it. We believe that landed proprietors have considered the measure, and that, with some few exceptions which we have before alluded to, they do not see that they would derive any advantage from the act. Indeed, as the act now stands, there are but few landed proprietors who can "take the benefit" of it.

In the first place, a landed proprietor cannot obtain an indefeasible title, unless it should "appear to be such as a court of equity would hold to be a valid marketable title." This reduces the number of persons who could be applicants for an indefeasible title

very considerably, for the number of marketable titles—that is to say, titles which a court of equity would force upon an unwilling purchaser—is small as compared with those which are unmarketable; and the defects of which, when sold, are cured by special conditions, year by year becoming more common and more stringent.

Again: even assuming that a person has a marketable title, if his property is mortgaged (and how few properties are not mortgaged?), he cannot register his title without the production of his deeds, and this he could not do without the consent of the mortgagee, who in most cases, as he could gain nothing by it, would doubtless withhold his consent.

The number of persons, therefore, who practically can apply for an indefeasible title is very small.

What benefits would even this small number derive from it? As far as they themselves, and those claiming under them, are concerned, actually none; for, except as to persons to whom they convey as purchasers for value, or mortgagees, the title would be just as impeachable as it was before registration.

Suppose, however, that the owner of land is about to sell or mortgage it, is it worth his while to register? We think not. If he has got a marketable title, why should he put himself to a greater expense in procuring registration than he would incur by shewing his title in the ordinary way, when, if a purchaser refused to take it, he could compel him to do so by bill, unless, indeed, he could, by procuring an indefeasible title for the purchaser, obtain a larger price for his estate? It is, however, at least doubtful whether he would by so doing get a farthing more.

It is true, that if a person registered his estate prior to mortgaging it, he would, on a future transfer of the mortgage, be put, perhaps, to less expense; but against this saving (which might be very remote) must be set off the greater expense incurred in obtaining an indefeasible title, to that which would result from shewing his title in the usual manner.

We have not space at present to consider the question whether, when registration has been obtained under the act, titles would be more simple and secure, and the expense of purchases and sales diminished. It is, we think, very doubtful whether that would be the result in all, or even in the majority of cases.

As to the registration of land *without an indefeasible title*, it is difficult to conceive what benefit it would confer upon any one, or what person could ever be induced to apply for such registration.

The Lord Chancellor, it seems, has still confidence in his own measure; he may at some future period endeavour to improve it. In the meantime let light be thrown upon its working. Let us know what are the expenses of registering titles. We speak not merely of the cost of the short instrument by which registration is effected or witnessed, but those attendant upon the examination of the title before it can be submitted to the registrar, and he can complete the registration. Let us know in how many cases registration is refused, and what costs have been incurred in such fruitless applications, which, instead of being a benefit to the landowner, only throw a cloud upon his title.

If properties with registered titles are sold, let us know whether they do in reality produce larger prices than properties which are not registered. In fact, let us know everything fully, whether it be to the advantage or disadvantage of the act.

If the act be on the whole beneficial, not even the influence of the family solicitor will prevent its coming yearly more and more into operation, and subsequent alterations and amendments may increase its utility; but if no real advantage will accrue to landed proprietors by their applying for registration, no clever speeches in either House, no popular articles in leading journals, will induce them to accept a gift, the value of which they think problematical.

WE believe that the Lord Chancellor has prepared and will soon lay before Parliament, a bill giving equitable jurisdiction, of course to a limited extent, to the county courts.

The proposed measure is one of great importance. It is, moreover, a step in the right direction, and will go far towards effecting the fusion of law and equity. The increase, however, in the jurisdiction of the county courts must, we think, also be supplemented by those important law reforms which the Lord Chancellor has so long and so eloquently advocated. As long as the law remains in its present chaotic state, we can scarcely expect that an adequate supply of judges can be found to administer satisfactorily both law and equity in local courts, unless their jurisdiction be limited, at any rate, as regards equity, to cases of a very simple character. The judges of the superior courts, both of common law and equity, independently of their labours being confined principally to one branch of the law, are assisted very materially by an able Bar, who by great research lay before them the law applicable to the cases they decide, collected sometimes out of many hundreds of volumes. A county court judge has rarely this advantage, and when questions of law are raised before him, he must in a great measure depend upon his own resources.

If, then, additional jurisdiction is given to the county court judges, additional facilities should be afforded them, and to those who seek justice from them, of ascertaining readily what the law really is.

First, there is no valid reason why we should not have in this country (as most of our colonies and the United States have), the whole of the public statute law, well arranged in at most three or four volumes.

And, secondly, a digest of the decisions of our courts of law and equity should be made, in accordance with the Lord Chancellor's speech in the House of Lords during last session. This great work might be completed at no far distant time, if Parliament would expend half as much in the improvement of the laws as they do upon the works of art by which their two Houses are ornamented.

CAMBRIDGE, April 21.—At a congregation this day, the under-mentioned degrees were conferred:—

Doctor of Laws—James Ogilvy Millar, Christchurch.
Master of Laws—Charles Evans Newbon, Trinity College.

HUDSON v. SLADE.

THE case of *Hudson v. Slade* has at length come to an end. This case, it will be remembered, was an action brought by Mr. Hudson against the benchers of the Middle Temple for assault and false imprisonment.

Mr. *Hudson* appeared on the floor of the court, and applied for a rule calling upon the defendant to shew cause why the award of the arbitrator to whom the case was referred should not be set aside, upon the grounds—first, that it was an excess, and that the arbitrator had gone beyond the limits and powers allowed him; and, secondly, that the award was generally inconsistent. Mr. *Hudson* said, before he entered into the facts, he would account for the delay in applying for the rule. The award was dated the 20th October last year, and was at that time sent to his attorney in London, whilst he himself was in Australia. It was posted on to that colony, and upon receiving it he came home, and arrived in England on the 13th February last, too late to make the present application last term.

THE LORD CHIEF JUSTICE said there was a little difficulty about the matter, but the Court would not stop Mr. *Hudson* from making the application.

Mr. *Hudson* said, that of course the Court would recollect, that at the trial the jury could not agree; and ultimately it was arranged between himself and the defendants, that the case should be referred to Mr. *Coleridge* to settle all matters in dispute between the parties. Mr. *Coleridge* accordingly undertook the matter, and it was his award that he complained of as being unfair. The award ordered, that he (the plaintiff) and the defendants should accept a release of all causes of action between them within a month from that date; that he should withdraw all imputations against the defendants with respect to ungentlemanly conduct; and in consideration of his doing so, the defendants were to hand over to him the sum of 50l. He complained that that was an unfair award.

THE COURT were of opinion that no rule should be granted. An arbitrator was possessed of extraordinary powers, and they were not satisfied that Mr. *Coleridge* had exceeded them.—*Rule refused.*

NEW TRIALS MOVED IN EASTER TERM.

COURT OF QUEEN'S BENCH.

NEW TRIALS.

Midd.—Bentley v. Caledonian Steam Towing Co.	Liverp.—Wilson v. Rankin (To be argued with D.)
Load.—M'Crea v. Holdsworth & ors.	—Husted & an. v. Lancashire and Yorkshire Railway Co.
—Morton v. Joshua	—Blair v. Hall & an.
—Hawkins v. Coulthurst	—Holt v. Ismay
—Deneham v. Deschamps	—Barron v. Snow
—Doulton v. Chandler	Sussex.—Lee & an. v. Patrick
—Wilson v. Nelson	Surrey.—Chambers v. Manchester and Milford Railway Co.
Leicester.—Knightley v. Camberland	—Partridge v. Foster
Nottingham.—Thackeray v. Wood	Carmarthen.—Stepney & ors. v. Kirkwood & ors.
York.—Blakiston v. Gilkes	—Palmer & an. v. Rees
—Baker v. Gray	Chester.—Hughes v. Birkenhead Improvement Commissioners (To be argued with D.)
Northumberland.—Tyne Improvement Commissioners v. General Steam Navigation Co.	—Same v. Same (To be argued with D., 2nd action)
Cumberland.—Swan v. Whitehaven Junction Railw. Co.	—Dacre v. Same (To be argued with D.)
Lancaster.—Chadwick v. Corporation of Burnley	
Liverp.—Haselden v. Byrom	

Hants.—Boulter v. Allden
Bristol.—Styles v. Cardiff Steam Navigation Co.
Anglesey.—Parry v. Jones
Stafford.—Jukes v. London & North-western Railway Co.

Monmouth.—James v. Levick
—Same v. Same

Tried during Term.

Midd.—Healey v. Thames Valley Railway Co.

COMMON PLEAS.

POSTPONED.

Lovegrove v. Brighton Railway Co. | Thornecroft v. Barrow Romsberg v. Falkland

NEW TRIALS.

Midd.—Knowlden v. Johnson
Lond.—Beresford v. Montgomery
—Gallagher v. Piper
—Notthard v. Pepper
Surrey.—Spooner v. Basco
Surrey.—Maughan v. Sharpe & an.
—Rayson v. Adcock
Liverp.—Lafone v. Ellison
—Brenner v. Hull
—Lafone v. Ellison.

SPECIAL PAPER.

Monday, May 2.
Bridges v. Potts & an. (Case by order)
Guardians, &c. of Keelmen on the River Tyne v. Elliot & ors. (Case at Nisi Prius)
Fittion v. Accidental Death Insurance Co. (D.)
Vestry of Shoreditch v. Hughes & an. (Case by order)
Thomas v. Lord George Paget (Case at Nisi Prius).

DEMURRER PAPER.

Bromley v. Thompson (D.)
Hughes & an. v. Vale of Llangollen Railway Co. (D.)
Hudson & an. v. Barclay (D., part heard)
Struck v. De Mattos (D.)
Goddard v. Cresswell (D.)
Owen v. Owen (Sp. C. by ord.)
Bartlett v. Baker & ors. (D.)
Cooke v. Mostyn (D.)
Guerrier v. Meredith (D.)
Dewhurst v. Jones (D.)

SITTINGS IN ERROR.

QUEEN'S BENCH.

Tuesday May 10 | Wednesday May 11

COMMON PLEAS.

Thursday May 12 | Friday May 13

EXCHEQUER.

Saturday May 14 | Monday May 16

Imperial Parliament.

HOUSE OF LORDS.—Thursday, April 21.

Lord *Redecliffe* moved the following resolutions:—That no private bill brought from the House of Commons shall be read a second time after Thursday, the 30th June next; that no bill confirming any provisional order of the Board of Health, or authorising any inclosure of lands under special report of the Inclosure Commissioners for England and Wales, or for confirming any scheme of the Charity Commissioners for England and Wales, shall be read a second time after Thursday, the 30th June next; that when a bill shall have passed this House, with amendments, these orders shall not apply to any new bill sent up from the House of Commons which the chairman of committees shall report to the House is substantially the same as the bill so amended.

The resolutions were agreed to.

The Land Mortgage Bank of India Bill was read a second time.

The Joint-stock Companies (Foreign Countries) Bill was read a second time.

On the motion of the *Lord Chancellor*, the select committee on the Improvement of Land Act, 1884, Bill, was named.

The Union Relief Aid Acts Continuance Bill, and the Land Drainage (Provisional Orders) Bill were read a third time and passed.

Lord *Chalmersford* rose to call attention to certain returns which had been moved for, for the purpose of seeing whether the great expectations which had been formed of the effects of the Land Transfer Act had been realised. From those returns he found that a registrar was appointed with a salary

of 2500*l.*, with an assistant registrar at 1550*l.*, a chief clerk at 400*l.*, and a second clerk at 200*l.* That was a most moderate staff for the business that had been anticipated, and he had no fault to find with the appointments. He found that since the act was passed there had been only sixty-five applications; and of these, eleven had been withdrawn, and only nine titles or estates had been registered. There were about two estates to be entered on the registry; so that he would say there were eleven titles on the registry. There were still forty-six applications on sufferance. The value of the property, so far as it could be ascertained, amounted to 1,500,000*l.*; and, besides these, nineteen applications not fully ascertained. The amount of acreage, so far as it was ascertained, amounted to 4787 acres.

Lord Chancellor.—On pending applications.

Lord Chelmsford.—A large part of the property was building land, and they seemed to realise the expectations of a noble lord, a member of the committee on the bill, who said that it would be of advantage to such noble lords as had property in the neighbourhood of towns who wished to sell it in lots for building. From the great expectations which had been put forth of 300,000 deeds being registered annually, it might be supposed that the act would be self-supporting. But such was not the case. The entire amount of fees received from the passing of the act until the 1st March was only 180*l.* The measure itself was looked upon as the great political achievement of the act of 1862; but it had turned out a great failure. This measure, which seemed to be so ardently desired for many years, was one in which the public mind had been misled, and a permanent charge was placed upon the revenue without any corresponding advantage.

The Lord Chancellor expressed his thanks to his noble and learned friend for having called attention to the subject, which had been done with his entire consent and concurrence; because he thought that the progress of new institutions should be discussed in Parliament and the country. When the present Government came into office, he framed the bill of 1862 on the views which he originally entertained, namely, the registration of the real owner. He would come now to what had been done under the act; its promises for the future, and the reasonable grounds for supposing that it would succeed, particularly when it was compared with other measures. Of the acts passed in modern times there was none more useful than the Copyhold Enfranchisement and Tithe Commutation Act of 1841. There was only one application for registration under it in the first year, 12 in the second, 29 in the third, 49 in the fourth, and yet in 1861, or twenty years after its passing, so great was its utility that the applications amounted to 786. Then, again, under the act for enabling exchanges to be made through the Inclosure Commissioners, which was passed in 1845, there were 10 applications in the first year, 14 in the second, 39 in the third, but in 1862, or only seventeen years after its passing, there were 246 applications. These instances shewed the slow growth of the institutions which were now generally adopted. In contrast therewith, under the act which came into operation in October, 1862, there had been during the sixteen months that it was in working order, and notwithstanding the most determined opposition to it on the part of the great body of the solicitors, there had been brought into court property to the value of 2,000,000*l.* This was not a failure. In a letter received from the chief registrar that very morning, that official stated that there had been additional applications for registering land, which comprised between 1700 and 1800 acres of land, and exceeding in value 130,000*l.* The obstacle to the working of the measure lay in the bad and erroneous mode of remunerating solicitors according to the length and repetition of their work. The result was, that to do justice to themselves, and to earn their bread, a system of complexity was kept up and encouraged. He (the Lord Chancellor) had obtained powers to assess a system for remunerating them under a different principle, but he had not received that assistance from the Profession which would have enabled him to accomplish this. He hoped to make another attempt, and to introduce a bill to alter the law for remunerating the solicitors. The knowledge of the present law was kept from the people, and any one asking to register his title was discouraged from the attempt. Was there any one of their Lordships who knew anything of the title to his estates? Was there not dwelling upon every estate—nay, rather sinking upon the shoulders of the proprietor—a soli-

citor who controlled and guided him in all things. Could he ever shake off the old man of the sea? He held in his hand a letter from a purchaser of 42 acres of land for 4000*l.*, who said that he had been desirous of having his title put upon the register, but that his solicitor said that it was against the spirit and the law of his caste, and that he could not concur in the application. The consequence was, that the gentleman went himself, and he had given him (the Lord Chancellor) the details of the whole amount which he had to pay for the registration of his title to this land, which was likely to be let for building, and the whole expense of putting the title upon the register, and emancipating the land and owners for ever from all parchments and mystifications, was 29*l.* 7*s.* 1*d.* Let any one of their Lordships run up in his memory the sums which he paid his solicitor from year to year. The solicitor was the familiar of every estate, and what an enormous amount of taxation and burthens was the consequence? This was by no means necessary; all that was wanted was, that the title should be examined, and the result of the examination stamped, and the consequence of the examination recorded, and the record continued in a simplified manner, so as to prevent the perplexity, complexity, and intricacy which resulted from the present system; and then the title would become simple, transparent, clear, and certain, in the same manner as that to funds, railway stock, and ships. That this measure had been a failure he utterly denied; that it would be a failure he ventured to anticipate was impossible. He had had the good fortune to assist in some measures of legal reform, and to originate others; but if there was anything upon which he could put his finger, by which he hoped that he should be hereafter remembered, it was this particular measure. He would venture to trouble their Lordships with only a few words more. He held in his hand a well-conducted paper, which represented the opinions of solicitors, in which it was said—"This (the different mode of remuneration) must be borne in mind when the scale of costs comes to be settled, for if it be not, it will be so much the worse for the chance of this new legal department, so far as the amount of its business is concerned." Those who thus prophesied had the means of fulfilling their own predictions; and this to a great extent was the cause of the measure being so slowly carried into effect.

Lord Cranworth did not think that this measure, having been in existence only about sixteen months, could yet be pronounced a failure. If his noble and learned friend could succeed in framing any measure to institute a more rational mode of remunerating solicitors, it would be worth all the bills upon this subject; but he must express very great doubt whether such a measure was possible.

The Duke of Montrose referred to an act some years since passed with the view of shortening documents of title in Scotland, which was practically a dead letter, owing to the lawyers telling their clients that the short deed was not satisfactory, and that they had better have everything recapitulated. This shewed how hard it was to bring about a change of this sort. As to registration of titles, he must say that that worked remarkably well in Scotland.

Lord Overstone quite concurred in the importance of this act; and he thought, if the Lord Chancellor would consent to the publication of the title prepared under the new statute to which he had referred, it would do more than anything else to render the measure intelligible, and to produce a conviction of the desirability of acting upon it.

The Lord Chancellor said, he should be most happy to assent to the publication of the document, but as it was an actual title, it must be understood that, of course, the names of parties and of places would not be printed. He might, however, observe, that the short document was the result of an examination of a title the abstract of which occupied 150 sheets.

Friday, April 23.

The Earl of Ellenborough laid upon the table a bill for the amendment of the law relating to sentences of death. He thought it inexpedient that the final decision in cases of so much importance should be cast upon the sole responsibility of the Home Secretary, and that, where the life of any man was concerned, it should depend upon the peculiar temperament of any particular man. Looking back to his own official experience, now extending over a period of more than thirty-five years, he remembered when the recorder of the city of London presented his report of the capital cases for

the decision of the Government. In these cases, all the principal members of the Government, including the Lord Chief Justice of the King's Bench, were summoned to attend the King, who presided on the occasion. He himself remembered George IV being present on one occasion, and he had no recollection that, under any circumstances, there was any distrust expressed at that time with respect to their decisions. On the contrary, they appeared to give general satisfaction. This course of proceeding continued until the accession of her present Majesty. It was then deemed advisable that a youthful female Sovereign should not be present to adjudicate concerning certain crimes then capitally punishable. He remembered sitting beside the Duke of Wellington when a bill, giving effect to those views, was introduced into that House, and though the noble duke admitted the necessity of such a measure, yet he deeply regretted the necessity for a change in the course of procedure which had existed for so many years. The penalty of death no longer attached to many of these crimes. He did not wish to place any additional labour upon the Sovereign, but he thought it would be expedient to place the law in such a position, that whenever the life of a subject was concerned, the final decision should rest with a body of persons selected from the Privy Council, and not, as at present, with the Home Secretary alone. The bill proceeded on the principle of the revival of the ancient practice to which he had referred. He trusted that the noble and learned lord on the woolsack, and other members of her Majesty's Government, if they approved of the principle of the bill, would take it under their charge.

The bill was then read a first time.

The Marquis of *Clanricarde* called attention to the first report of the Commissioners of Inquiry into the English and Irish Courts of Common Law and Chancery.

Earl *Granville* was understood to say that a bill had already been prepared, embodying the recommendations of the commission, and the Attorney-General for Ireland had given notice of his intention to introduce it in the other House. The greater part of the returns had been already made, but this being the first year of their preparation, some delay had occurred on the part of some of the officers. He confidently expected that they would all be published about the middle of June.

Tuesday, April 26.

Lord *Redesdale* moved the second reading of the Mortgage Debentures Bill, which, he said, had been, at the suggestion of several of their lordships, changed from a private into a public bill.

After a few observations from the Duke of *Marlborough*, Lord *Taunton*, and from Lord *Redesdale* in reply, the bill was read a second time, and referred to a select committee.

The Joint-stock Companies (Foreign Countries) Bill, whose object is to give to companies which have transactions abroad power to use a corporate seal, passed through committee.

Lord *Chelmsford* called attention to the case of *The Tuscaloosa*. After a debate of considerable length the Lord Chancellor said, that new instructions were under consideration, which would be generally circulated through our colonial harbours.

HOUSE OF COMMONS.—*Thursday, April 21.*

Mr. *Selwyn* asked the First Commissioner of Works whether her Majesty's Government intended to accept the offer made by the Society of Lincoln's-inn in 1859, and since repeated, viz. either to give the ground necessary for the erection of courts for the Vice-Chancellors, or to build such courts at the expense of the society upon receiving, for a term of years, 4l. per cent. per annum on the actual outlay on the buildings from the Suitors' Fund, but without any charge upon, or guarantee from, the national exchequer.

Sir *F. Kelly* asked whether it was a part of the scheme which her Majesty's Government had in view to erect one large building in the metropolis for the purposes of the law courts generally.

Mr. *Cowper* said the proposal that was made in 1859 for the erection of the Vice-Chancellors' Courts within the precincts of Lincoln's-inn was, he understood, for the benefit of the inn itself rather than for the public, as it would no doubt enhance the value of chambers in Lincoln's-inn, because he understood it would not be so advantageous to the suitors at large or the profession as the scheme which he proposed for

the concentration of all the offices in one building. He believed it was on those grounds that Lord Derby's Government refused the offer when it was made to them, and her Majesty's present Government had also refused it, and for the same reasons. The scheme proposed by her Majesty's Government was to bring together under one roof, or in their immediate contiguity, all the courts of law.

Sir *F. Kelly* asked when the measure would be brought forward.

Mr. *Cowper* said it was now under consideration, and would be brought forward in a few days.

The High Court at Bombay Bill was read a third time and passed.

The Court of Justiciary (Scotland) Bill, the Fish Teinds (Scotland) Bill, and the Summary Procedure (Scotland) Bill were severally passed through committee.

The Charitable Assurances Inrolments Bill was read a second time.

The Bridges (Ireland) Bill was defeated in committee by 128 to 85.

The Chancellor of the Exchequer moved the following members as the select committee on Government annuities:—The Chancellor of the Exchequer, Mr. Sotherton Eastcourt, Mr. Milner Gibson, Mr. Henley, Sir Minto Farquhar, Sir Stafford Northcote, Mr. Horsfall, Mr. Goschen, Mr. Charles Turner, Mr. Herbert, Mr. Hubbard, Mr. Henry B. Sheridan, Mr. Ayrton, Mr. Hodgkinson, and Mr. Paget.

Agreed to.

On the motion of Mr. *Gregory*, a return was ordered of all civil bill ejectments entered at the suit of the Law Life Society before the chairmen of quarter sessions of the county of Mayo and the county of Galway, from Hilary quarter sessions, 1852, up to the present time, distinguishing the ejectments of each year.

Friday, April 22.

Mr. *M'Mahon* asked the Chief Secretary for Ireland when the Brehon laws, now in course of arrangement and translation, would be published.

Sir *R. Peel* said that the transcript of the translation was complete. One volume would be published forthwith, and the other volume would appear as speedily as possible.

Mr. *Hunt* asked the right hon. gentleman, the Secretary of State for the Home Department, if he would postpone the Penal Servitude Bill from Monday next to some future day.

Monday, April 25.

The Civil Courts (Ireland) Bill, which was read a second time before the Easter recess, was recommitted, in order to consider various amendments which had been introduced, as to results of suggestions from the high sheriffs and grand juries, to whom it had been sent for the purpose of eliciting their opinions on its proposed enactments.

The Attorney-General for Ireland explained the nature of these alterations, which were chiefly of a technical character, and relating to matters of detail.

Several new clauses were agreed to, and the bill passed through committee.

The Court of Chancery (Dispatch of Business) Bill passed through committee.

Mr. *Scholsfield*, in moving the second reading of the Partnership Law Amendment Bill, observed that it was the same in principle as that which last year passed through the House, and was sent up to the Lords, though too late to be passed into law. The difficulty which the bill proposed to remedy was this:—At the present moment there were only two modes by which a capitalist desirous of assisting a mercantile concern could do so. He must either lend his money at a fixed rate of interest, or he must become a partner, and thus expose to possible risk his entire property. The bill proposed that in future a capitalist might join a firm as a limited partner, upon the condition that he should publicly state, upon a register to be kept for that purpose, the amount he had advanced, the terms upon which the advance had been made, and various other matters named in the measure. The bill was emphatically a creditors' bill. At present a loan to a firm was a secret affair. They were given credit for ample capital, but when they became unfortunate it was found that the capital had been borrowed, and the lender swept away the greater part of the estate. The present bill would not at all alter the law of partnership qua those who were held out as partners, and the only person

whose liability would be limited was one of whom the creditors knew nothing, except that his name was upon the register for a limited amount. The principle was by no means new, for in 1851 a committee of the House reported in favour of it, and in 1854 the present Solicitor-General carried a resolution to the same effect. If the bill should be allowed to go into committee, he would then explain more fully its details.

Mr. Hubbard moved that the bill be read a second time that day six months.

After a debate, the bill was read a second time, without a division.

The Charitable Assurances Inrolment Bill, which came down from the Lords, passed through committee.

The Lord Advocate's name was added to the select committee on the Bankruptcy Act.

Mr. Locke gave notice of a motion for the addition of the name of Mr. Roebuck to the same committee; and

Mr. Whiteside intimated that he would also move that the hon. member for the city of Dublin (Mr. Vance) be added to it.

Mr. Hassard intimated his intention to retire from the committee, on account of his time being otherwise occupied. It was accordingly agreed that he should be discharged from service.

The Attorney-General for Ireland moved for leave to introduce a bill to alter the constitution, and amend the practice and course of proceeding in the High Court of Chancery of Ireland.

After a debate of some length, Mr. P. Hennessy moved the adjournment of the debate; but, after some further discussion, the motion for adjournment was withdrawn, and leave was given to bring in the bill, upon the understanding that it should be read a second time on Thursday fortnight.

Tuesday, April 26.

Mr. Scholefield called the attention of the House to the report of the select committee on Standing Orders (18th March, 1864), on the case of the Sheffield, Chesterfield, and Staffordshire Bill, and moved, "That a select committee be appointed to inquire into the operation of the Standing Orders of this House, and of the act 9 & 10 Vict. c. 20, which regulate the deposit of money, or of public securities, with the Courts of Chancery in England and Ireland, and of the Court of Exchequer in Scotland, in respect of works and undertakings requiring the authority of Parliament by private bills." The House was fully aware of the Standing Order for the deposit of money, and also that there was reason to believe the order was evaded; but this was the first case in which it had come officially to the knowledge of the committee, and they in consequence considered it of so important a nature as to require the attention of the House. It had been discovered that this company had not made the necessary deposit from their own capital, but that it had been done for them on certain conditions which the hon. and learned gentleman the member for Cambridge University had discovered in the Court of Chancery.

Mr. Hodgson suggested that something should be done to facilitate the withdrawal of the deposits from the office of the Accountant-General in Chancery, and also to lessen the expenses attending it.

Mr. Selwyn said, that, without mentioning names, he would read the document referred to, but, if necessary, he would place it in the hands of the Speaker, or the officers of the House. The agreement was to the following effect:—That, in consequence of the advance and deposit of the sum of 10,400*l.* at the office of the Accountant-General in Chancery, in the names of A. and B., the parliamentary deposit on the above railway, the proposed company undertook, in case the money was not repaid before the third reading of the bill in the House of Lords, to withdraw or cause the bill to be withdrawn, and to do all that was necessary to obtain the withdrawal of the money. To that was added an agreement between the solicitors of the company and the parliamentary agents, that in pursuance of the above arrangement the sum deposited should be paid or satisfactorily secured to the bank, before the bill was read a third time in the House of Lords. The effect of those agreements was, as the House would see, for third parties, which might be called the "fourth estate," to set aside the authority of Parliament, although a committee might have so far determined that the scheme before

Parliament was for the public advantage. He expressed a hope, that so long as they retained the Standing Orders, they would take care they were adequate and effectual for the purposes for which they were required.

After some remarks from Mr. Hadfield, the motion was agreed to.

The select committee on the Copyright Bill was nominated.

Wednesday, April 27.

Mr. Neodigate moved the second reading of his Church Rates Commutation Bill, but, after some debate, the second reading was negatived by 160 to 60, and the bill was therefore lost.

Sir J. Hay moved the second reading of the Bank Notes (Scotland) Bill, but, after a debate, the bill was withdrawn.

Mr. Massey brought up the report of the committee on the seat of the last-appointed Under-Secretary of State, in which they declared, that, in their opinion, that seat had not been vacated.

BILL IN PROGRESS.

(Concluded from p. 148).

19. The author of or proprietor of the copyright in any book or periodical work or of any dramatic piece or musical composition, whether British or foreign, or of any work of art to which the privilege of copyright extends, and his assigns, may require an entry thereof to be made in the register, by presenting to the registrar a request for that purpose according to the Form No. 3 of Schedule (B.) to this act, and on payment to the registrar of the sum of 2*s.* 6*d.* in respect of such book or work of art, and 1*s.* if first published in any foreign country; provided that in all cases of periodical works it shall be sufficient for the provisions of this act if the first part, number, or volume be so entered and registered.

20. In case of any assignment by the registered proprietor of the whole or any portion of his interest in any copyright, right of representation or performance, the assignee, with the consent of such registered proprietor, may require an entry thereof to be made in the register by presenting to the registrar a request and concurrence in the Form No. 4 of Schedule (B.) to this act, and on payment of the fee of 2*s.* 6*d.* to the registrar; and any entry made in pursuance thereof shall operate as a legal assignment, be free from stamp duty, and have the same force as an assignment by deed.

21. In order to entitle to the protection of this act the translation of any original work (including articles in any newspaper or periodical, and afterwards published in a separate form), first published in any foreign country to which the privilege of copyright in Great Britain is extended, the author of such original work must cause the same to be registered in manner above prescribed within three months after first publication thereof in such foreign country, and such translation must be so registered within three months after its publication.

22. If the registrar refuse or neglect to enter in the register any copyright work entitled to registry under this act, or any assignment which he is required to enter, or to give any certified copy of any entry therein, on demand being made by the person entitled to demand such registry or certified copy, the fee for the same being first tendered to the registrar, he shall forfeit the sum of 20*l.* for each such refusal or neglect.

23. Every entry made in pursuance of this act of any first publication shall be *prima facie* evidence of a rightful first publication, but subject to be rebutted by other evidence; and if any person shall wilfully make, or cause to be made, any false entry in the register, or shall wilfully produce, or cause to be tendered in evidence, any paper falsely purporting to be a copy of any entry in the said register, he shall be guilty of an indictable misdemeanour, and shall be punished accordingly.

24. The publisher of every book published in the British dominions shall deliver, or cause to be delivered, one printed copy of the whole of the first edition, together with all maps, prints, or other engravings belonging thereto, or of any second or subsequent edition if the first or some preceding edition shall not have been delivered, and of every subsequent edition which shall contain additions or alterations, the same to be finished and coloured in the same manner as the best co-

piece of the same, whether bound, sewed, or stitched together, shall be published, and upon the best paper on which the same shall be printed, at the British Museum within the times hereinafter mentioned in relation thereto respectively:—

If the first publication, sale, or exposure for sale be within the bills of mortality, within one month thereafter:

If the first publication, sale, or exposure for sale be in any other part of the United Kingdom, within three months thereafter:

If the first publication, sale, or exposure for sale be in any other part of the British dominions, within twelve months thereafter.

25. The publisher of every book published in the British dominions shall deliver, or cause to be delivered, at Stationers Hall four printed copies of the whole of the first edition, together with all maps, prints, or other engravings belonging thereto, or of any second or subsequent edition if the first or any preceding edition shall not have been delivered, and of every subsequent edition which shall contain additions or alterations, the same to be finished and coloured in the same manner as the greater portion of the impression of the same, whether bound, sewed, or stitched together, shall be published:—

Such delivery of such four copies at Stationers Hall to be for transmission to and deposit at the following libraries:—viz. of one copy to the Bodleian Library at Oxford, one copy to the Public Library at Cambridge, one copy to the Library of the Faculty of Advocates at Edinburgh, and one copy to the Library of the College of the Holy and Undivided Trinity of Queen Elizabeth, near Dublin, within one month after demand in writing, under the hand of the person duly authorised by the said Company of Stationers, or by the librarian of any of the said libraries, or by any other person thereto authorised by the librarians of the said libraries, to demand and receive the same; provided that such demand shall be left at the place of abode of the publisher of such book within twelve months after its first publication:

If any publisher shall be desirous of delivering the copy of any book so demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same free of expense at such library to the officer appointed for such purpose, and such delivery shall be held as equivalent to, and accepted in lieu of, delivery to the aforesaid officer of the Stationers Company.

26. The author of any book, or of any dramatic piece or musical composition, if printed or published in any foreign country to which the privilege of copyright is extended, and of any translation thereof, shall deliver, or cause to be delivered, to the registrar one copy of the whole, whether in one or more volumes, of every such work, together with all maps and prints relating thereto, one copy of the whole of every second or subsequent edition thereof which shall contain any addition or alterations, and one copy of every print or engraving; and with regard to such translation shall also deliver to the said registrar one copy of the original work from which such translation is made, with a notification on the title page or if published in parts, on the title page of the first part, or if no title page on some conspicuous part of the work, of his intention to reserve the right of translation; and one copy of every such translation, and every such original work intended for translation, shall be so delivered within three months after the first publication thereof in the foreign country, and the translation thereof within twelve months afterwards, unless published in parts, in which case each part of such original work shall be delivered within three months after its publication, and the translation of each part within twelve months after delivery of the part of which it is a translation.

27. All such deliveries as aforesaid shall be made between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any days except Sundays, and such other days as are at the said places of delivery duly appointed to be observed and kept as public holidays, to the officer duly appointed at such places to receive the same, and which officer shall give receipts in writing for the copies so delivered to him, and be responsible for the due deposit thereof within one month thereafter in the several places for which they are delivered, and such receipts shall be sufficient proof of such delivery.

28. If any publisher of any such book, or of any second or subsequent edition required by this act to be delivered, shall

neglect to deliver the same, pursuant to this act, he shall forfeit for every such default, besides the value of such copy of the book or edition which he ought to have delivered, a sum not exceeding 5*l.*, to be recovered by the librarian or other officer (properly authorised) of the library for the use whereof such copy should have been delivered, in a summary way, on conviction before two justices of the peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any court of record in the United Kingdom, in which action, if the plaintiff or defendant shall obtain a verdict, he shall recover the costs reasonably incurred, to be taxed as between attorney and client.

29. The registered proprietor of the copyright in any book first printed and published in the British dominions, or in any foreign country to which the privilege of copyright is extended, and of any work of art which shall be registered after the passing of this act, or his agent, may give to the Commissioners of her Majesty's Customs notice in writing of such copyright, such notice to be in the Form No. 5 of Schedule (B.) to this act, and to contain the particulars specified therein so far as they are applicable, together with a copy of the entry of the registry of such book or work of art, duly certified by and under the hand of the registrar, and for which certified copy such registrar shall be entitled to the fee of 1*s.*

30. The said commissioners shall cause to be made and publicly exposed at the custom-house of the several ports in the United Kingdom printed lists of all books and works of art of which such notice shall be given to them as aforesaid, and also from time to time deliver to the Board of Trade so many copies of such lists as such board may require, for transmission to her Majesty's possessions abroad, for public exposure there, at such places and in such manner as the Board of Trade may direct: provided always, that at the expiration of forty-two years from the date of publication of any book or work of art inserted in the same lists the said commissioners shall cause it to be struck out of the said lists, unless the proprietor of the copyright shall then give further notice that the author is still alive, or has died within seven years; and if such further notice of the author's being alive be not renewed at the expiration of each succeeding twelve months the book shall be struck off the lists at the end of seven years from the last further notice.

As to protection of copyright, and remedies against piracy:

31. The importation into the British dominions of pirated copies of any book or any work of art included in the lists prescribed by sect. 29 shall be prohibited, unless imported with the sanction or authority in writing of the proprietor or other person upon whose notice such book or work of art shall have been inserted in such lists; and all copies imported contrary hereto shall be forfeited, and may be seized by an officer of customs or inland revenue, and shall become the property of the proprietor, and be delivered to him, if claimed by him within three months after such seizure, and if not so claimed shall be destroyed; and the importer thereof, if such copy be imported for sale, shall forfeit the penalty of not more than 5*l.* in respect of every pirated copy so imported, to be sued for and recovered by the said proprietor in manner hereinafter prescribed.

32. In any case where the custom-house officer has reason to believe that any package contains any such pirated books or works of art, he may detain such package (but shall not detain a traveller's personal luggage) till he has given notice (which he is hereby authorised to do) to any of the publishers of such books or works of art whose copyright he has reason to believe has been infringed thereby, or to any person whom such publishers may appoint, for the purpose of examining such imported copies, and if proved to be piracies such package and its contents shall be forfeited, and the importer thereof shall be subject in penalty in manner mentioned in the immediately preceding clause.

33. If any person shall deem himself aggrieved by any entry made under colour of this act in the said register, or by the insertion of any literary works, painting, drawing, photograph, or other work of art in the aforesaid lists, it shall be lawful for any judge at chambers, on the application of the person so complaining, to issue a summons calling upon the person upon whose notice such book or work of art shall have been entered in the said register or inserted in the said lists,

as the case may be, to appear before such judge, at a time to be appointed in such summons, to shew cause why such entry in the said register should not be expunged or varied, or why such insertion in the said lists should not be expunged; and such judge shall at the time so appointed proceed to hear and determine upon the matter of such summons, and make an order therein (in writing): provided always, that if such application relate to a wrongful first publication of which any party has availed himself to obtain an entry in the said register of a spurious work, and it shall appear to such judge with respect to such wrongful publication, if in a country to which the author or first publisher does not belong, and between which and this country no treaty of international copyright subsists, that the party making the application was the author or first publisher, as the case requires, or with respect to such wrongful first publication, either in the country where a rightful first publication has taken place, or between which and this country a treaty of international copyright does subsist, that a court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favour of the right of the party claiming to be the author or first publisher, such judge shall make an order for expunging or varying the entry complained of, such order, in any of the foregoing cases, to be made with or without costs, as to such judge shall seem just; and upon service of such order, or a certified copy thereof, upon the said registrar, if the same shall relate to any entry in the said register, or upon the Commissioners of Customs, or their secretary for the time being, if the same shall relate to any insertion in the said lists, the said registrar shall expunge, vary, or confirm the said entry, or the said commissioners shall expunge such book from the said lists, or retain the same therein, according to the tenor of such order; and in case such book or work of art shall be expunged from such lists in pursuance of any such order, the prohibition imposed by this act in respect of the importation of such book or work of art shall thenceforth cease. If at the time appointed in any such summons the person so summoned shall not appear before such judge, then, upon proof by affidavit that such summons, or a true copy thereof, has been personally served on or left at the last known or usual place of abode of the person so summoned, or transmitted by post to him at such last known place of abode, or, in case the person to whom such summons was directed and his place of abode cannot be found, that due diligence has been used to ascertain the same, such judge shall be at liberty to proceed ex parte to hear and determine the matter; but if either party be dissatisfied with such order, he may apply to the superior court of which such judge is a member to review such order, and make such further order thereon as such court may see fit; and the remedies provided by this section shall be applicable to any entry made in the register book of Stationers Hall, and of any insertion in any such lists publicly exposed by the Commissioners of Customs, prior to the passing of this act.

34. If any person, not being the proprietor of the copyright in any work of literature or work of art wherein such copyright shall be subsisting shall, without the authority in writing of such proprietor, knowingly import, sell, publish, or expose, or have in his possession for sale or hire, in any part of the British dominions, any pirated copy of such work, he shall forfeit the same, and also the sum of 5s. in respect of every such copy to the proprietor of the copyright; and every person who shall have in his possession the stereotype plates of any pirated book, the plate upon which any pirated copy of any print, chart, or map may be engraved, or any mould or die for the manufacture of pirated copies of any sculpture, model, or cast, shall forfeit the same to the said proprietor; or if any person, not being the proprietor for the time being of copyright in any engraving, print, painting, drawing, or photograph, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or import into any part of the United Kingdom, any copy or imitation of the said work, for every such offence he shall forfeit to the proprietor of the copyright a sum not exceeding 10l.; and all such repetitions, copies, and imitations made without such consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

35. No person shall do or cause to be done any or either of the following acts—that is to say,

First, no person shall fraudulently sign or affix to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram of a person who did not execute or make such work, or offer the same for sale, exhibition, or distribution:

Secondly, no person shall fraudulently utter or dispose of any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been made or executed by the author or maker of the original work from which such copy or imitation shall have been taken:

Thirdly, where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty, during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish, or offer for sale, such work, or any copies of such work, so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker.

Every offender under this section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding 10l., or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale; and all such copies, engravings, imitations, or altered works shall be forfeited to the person, or the assigns or legal representatives of the person, whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid: provided always, that the penalties imposed by this section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed.

36. Any person who shall represent or perform any copyright dramatic piece or musical composition, or anything bearing the same title or purporting to be the same, without the consent of the author or proprietor of the sole right of representing or performing the same, during the continuance of such right, shall forfeit to such author or proprietor the sum of 40s., or the full amount of the benefit or advantage arising from each such representation or performance, or the amount of the injury or loss sustained by such author or proprietor, for whichever he shall elect to proceed or sue, together with the costs of such proceeding or suit.

37. If any person shall during the term of copyright in any lecture or sermon, without the leave of the author thereof or his assigns, by any means obtain or make a copy thereof, or print or publish the same in any public newspaper or otherwise, or shall sell or publicly expose any copy thereof for sale, knowing the same to have been obtained or printed or published without such leave as aforesaid, every person so offending shall forfeit to the author or his assigns every such pirated copy found in his possession, and 5s. for every sheet thereof.

38. Any penalty or forfeiture imposed by this act for infringement of any copyright protected by this act, and given to the proprietor of the copyright in respect of which the same is incurred, may be prosecuted for or recovered by such proprietor, together with costs of recovering the same, summarily, before any justice of the peace or magistrate for the county or place in which the offence shall have been committed, or in which the offender shall reside, and in Scotland before any sheriff of the county, whose award shall be final, but without prejudice to any right of action which the proprietor may or might otherwise have had for any damages consequent on this or any other infringement of his privilege of copyright; and any damages which such proprietor may sustain from any infringement of his privilege of copyright may be sued for by action at law, to be brought by him in any court having jurisdiction in that part of the British dominions in which the offence shall have been committed or the offender shall reside; and in every such proceeding, if it relate to the right of representation or performance of any

dramatic piece or musical composition, it shall be sufficient for the plaintiff to state that he has the sole right, without stating that it is subject to any right which he could or may have given to any other person, not being the defendant, to represent or perform the same. In any action at law for damages the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objection on which he means to rely on the trial thereof; and if he assert that the plaintiff is not the author or first publisher of such literary work or work of art, or the proprietor of the copyright therein, or that some other person was so, he shall specify in such notice the name of such other person, together with the title of the literary work or description of the work of art, and the time and place of first publication thereof; otherwise he shall not, at the trial or hearing of such action, be allowed to give evidence that the plaintiff was not the author or first publisher of the literary work or work of art, or the proprietor of the copyright therein, or that any other person was so; nor shall any objection be allowed to be made or taken by or for the defendant which shall not have been stated in such notice; and on a verdict being given for the plaintiff he shall be entitled to recover his full costs; and if any action or suit shall be commenced or brought against any person for doing or causing to be done anything in pursuance of this act, the defendant in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited or discontinued his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as any defendant has by law in any other case. And all actions, suits, bills, indictments, or informations for any offences against this act shall be brought, sued, and commenced within twelve months next after such offence committed, or else the same shall be void; provided that such limitation of time shall not extend or be construed to extend to any actions, suits, or other proceedings which, under the authority of this act, shall or may be brought, sued, or commenced for or in respect of any copies or books to be delivered for the use of the British Museum.

39. The proprietor of the copyright in any work of literature or art shall not be entitled to maintain any action or suit at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall before commencing such action have registered the same in manner prescribed for that purpose; nor shall the proprietor of any translation of any dramatic piece be entitled to such protection or benefit unless such translation be published within three months after the registration of the work of which it is a translation: provided always, that the omission to register any work of literature or art shall not affect the copyright therein of the proprietor thereof, nor shall such omission as to any dramatic piece prejudice the remedies which the proprietor of the right of representation thereof may have by virtue of this act.

40. In case the Legislature or proper legislative authorities in any British possession shall make due provision for securing or protecting the rights of British authors and artists in such possessions, by any act or ordinance, duly approved of by her Majesty for that purpose, her Majesty may, if she think fit, thereupon issue an Order in Council declaring that so long as the provisions of such act or ordinance continue in force within such possession the prohibitions and provisions contained in this or any other act relating to or for the privilege of copyright shall be suspended, so far as regards such possession, and thereupon such act or ordinance shall come into operation, except so far as may be otherwise provided therein, or as may be otherwise directed by such Order in Council: provided always, that no such act or ordinance shall be construed to authorise the importation into the United Kingdom of any pirated copies of any work wherein copyright may be subsisting in the United Kingdom, and if such pirated copies shall be brought into the United Kingdom, they shall be forfeited and destroyed, or returned to the British possession from which they shall have been imported, as the Commissioners of Customs may direct.

41. When her Majesty shall have issued any Order or Orders in Council under the authority of this act, her Majesty may, from time to time, revoke the whole or any part thereof by any further order.

42. Every Order in Council issued under the authority of

the act, or to give effect to any colonial act or ordinance relating to copyright, duly approved by her Majesty, shall, within fourteen days after the issuing thereof, be twice published in the London Gazette.

43. A copy of every Order in Council issued under the authority of this act, and of every such act or ordinance, together with the Order in Council thereon, shall be laid before both Houses of Parliament within six weeks after issuing of such order, if Parliament be then sitting, and if not then within six weeks after the commencement of the next session of Parliament.

44. To provide against the suppression of books of importance to the public, the Judicial Committee of her Majesty's Privy Council, on complaint made to them that the proprietor of the copyright in any book, after twenty-five years from the date of its first publication, or after the death of its author, has refused to republish or to allow the republication thereof, whereby such book may be withheld from the public, may grant a license to such complainant to publish such book, in such manner and subject to such conditions as they may think fit, and such complainant may publish such book accordingly.

45. Nothing in this or any other act relating to copyright shall prevent the importation into the United Kingdom, for deposit in the library of the British Museum, of single copies of any books which may consist in part of matter in which any copyright may subsist in the British dominions, provided the same contain other and original matter.

46. This act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions, including the Islands of Guernsey, Jersey, Alderney, and Sark, and shall be registered in the Royal Courts of the Islands of Guernsey and Jersey respectively, and the said Royal Courts respectively shall have full power and authority and are hereby required to register the same.

47. This act shall come into operation on the day of the passing of this act; and in citing it in other acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Copyright Consolidation Act, 1864."

Interpretation of terms used in this act:

48. "Assigns" shall be construed to mean and include every person in whom the interest of the author in any copyright shall be vested, whether derived from such author before or after the publication of the work, either by sale, gift, bequest, operation of law or otherwise:

"Author" shall, with reference to prints, sculptures, and other works of art, be deemed to include the painter, engraver, designer, inventor, and maker thereof:

"Board of Trade" shall mean the Lords of the Committee of Privy Council for the consideration of all matters of trade and plantations:

"Book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, together with all maps, charts, prints, and other embellishments, and illustrations forming part of any book, and referred to therein:

"British dominions" shall mean and include the United Kingdom of Great Britain and Ireland, and all colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired:

"Contributions" shall include essays, poems, tales, or other articles inserted in magazines or other periodical works:

"Copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied:

"Dramatic piece" shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment:

"First publication" shall mean first printing and circulating, or offering for sale, of any literary work, and shall include first representation, performance, or delivery of dramatic pieces, musical compositions, and lectures, and first exhibition or offering for sale of any statue, painting, engraving, print, map, or photograph:

"Literary works" or "works of literature" shall be construed to mean books, pamphlets, dramatic pieces, musical compositions, lectures, and sermons:

"Periodical work" shall mean and include every encyclopædia, review, magazine, or work published in a series of volumes or in parts or numbers, or other periodical work:

"Pirated copy" shall mean, with reference to any work of literature or art in which copyright subsists, any copy of such work printed or published or made without the written authority of the proprietor of such copyright, and with reference to any work of literature or art first published in any foreign country to which the privilege of copyright is extended, shall mean any copy thereof printed, published, or made without the sanction of the proprietor of the copyright therein, in any other country than that in which such work shall have been first published:

"Print" shall include prints taken by engraving, lithography, or any other mechanical or scientific process, by which any objects or paintings, or any prints or impressions of drawings or designs, are capable of being represented or multiplied indefinitely:

"Publisher" shall include publishers or partnerships, although changes should take place in the individual members of the same after the date of registration:

"Registrar" shall mean the officer appointed by the Company of Stationers in London for registering copyright works:

"Universities and colleges" shall be understood to mean the two universities of Oxford and Cambridge in England and the colleges or houses of learning within the same, the four universities in Scotland, and the colleges of Eton, Westminster, and Winchester:

"Works of art" shall include articles of sculpture, models, paintings, engravings, drawings, prints, and photographs, or any means by which the representation of objects may be given.

WHITEHALL, March 12.—The Lord Chancellor has appointed James Frederick Tweedale, of Oldham, in the county of Lancaster, Gent., to be a Commissioner to administer oaths in the High Court of Chancery in England.

At the Court at Osborne House, Isle of Wight, the 26th April, 1861. Present, the Queen's Most Excellent Majesty in Council. This day the Right Hon. Sir James Plaistead Wilde, Knt., and the Right Hon. Henry Austin Bruce, M.P., were, by her Majesty's command, sworn of her Majesty's Most Honourable Privy Council, and took their respective places at the board accordingly.

The valuable **LAW LIBRARY** of the late Sir **WILLIAM ATHERTON**, M.P., Q. C., the Queen's Attorney-General.

MR. HODGSON will **SELL by AUCTION**, at his Rooms, 115, Chancery-lane, W. C., on **THURSDAY**, May 5, and following day, at half-past 12 (by order of the Executors), the **LAW LIBRARY** of the late Sir **WILLIAM ATHERTON**; comprising Statutes at Large, 83 vols.; Public General Statutes, 36 vols.; Law Journal, 1845 to 1863, 59 vols.; Chitty's Statutes; Harrison's and Fisher's Digests; Chitty's Equity Index; Bacon's Abridgment; Modern Practical Works in every branch of the Law; and a very complete Series of the Common-law Reports; Admiralty, Ecclesiastical, and House of Lords Cases, &c. To which is added, the Law Libraries of two Barristers retiring, including the Law Journal, 1832 to 1863; the Jurist, 1837 to 1863; Hansard's Parliamentary History and Debates, 263 vols.; Modern Works on Conveyancing; useful Books of Practice; and a Series of the Equity and Common-law Reports.

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The Jurist

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MAY 7, 1864.

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THE JURIST.

LONDON, MAY 7, 1864.

As we have given in a previous number (*ante*, p. 104) a concise account of the case of *The Alexandra*, stating the argument for and against the Crown, and the grounds of the differing judgments of the barons of the Exchequer, we think it may be convenient to follow the same course with reference to the appeals to the Exchequer Chamber and the House of Lords, and shew, shortly, how the hope that the Foreign Enlistment Act would have a construction put upon it by our highest court of judicature has been unfortunately defeated.

It will be remembered that the Chief Baron declined to sign the bill of exceptions which was tendered to him by the Attorney-General, on the ground that it did not correctly state his direction to the jury. When the present Attorney-General applied to the Court of Exchequer for a new trial, the question whether there was an appeal from the decision of that Court upon the rule was mooted, and rules were made, pursuant to the provisions of the 26th section of the Queen's Remembrancer's Act, 22 & 23 Vict. c. 21, which rules will be found in 10 Jur., N. S., part 1, p. 393, and were intended to create the right of appeal. Now, this 26th section of the Queen's Remembrancer's Act is thus worded:—

"It shall be lawful for the Lord Chief Baron and two or more barons of the Court of Exchequer from time to time to make all such rules and orders as to the *process, practice, and mode of pleading* of the revenue side of the court, and as to the allowance of costs, and for the effectual execution of the act, and the intention and objects thereof, as may seem to them necessary and proper; and also from time to time, by any such rule or order, to extend, apply, or adapt any of the provisions of the Common-law Procedure Act, 1852, and the Common-law Procedure Act, 1854, and any of the rules of pleading and practice on the plea side of the said court, to the revenue side of the said court, as may seem to them expedient for making the *process, practice, and mode of pleading* on the revenue side of the said court as nearly as may be uniform with the *process, practice, and mode of pleading* on the plea side of the said court."

The argument and decisions turned upon the meaning of these words "*process, practice, and mode of pleading*." The counsel for the Crown contending, that proceedings in error are a part of the "*process, practice, and mode of pleading*" of the Court—that, inasmuch, as by sect. 20 of the Queen's Remembrancer's Act power is expressly given to either party to tender a bill of exceptions on the trial of any issue, it must have been intended that the provisions of the two Common-law Procedure Acts as to appeals should, in the discretion of the barons of the Exchequer, be also applicable to revenue cases; that it must be considered that the Legislature—not the Court of Exchequer—had made these rules; that the Legislature had the power to create an appeal under

the 26th section; and that "*practice*" included all the proceedings by which a cause is brought to judgment and execution. On the other hand, the counsel for the defendants argued, that "*the creating an appeal*" cannot be regulating "*the process, practice, and mode of pleading of the Court*;" that those words could not give, as according to the contention of the other side they must give, to a bare majority of the barons of the Exchequer, authority to legislate for the Exchequer Chamber and the House of Lords; and, in short, that the words on which the question arose, referred only to the proceedings of the Court of Exchequer itself.

The Court of Exchequer Chamber was composed of the Chief Justice and the puisne judges of the Court of Queen's Bench, and of the Chief Justice and two puisne judges of the Court of Common Pleas; and singularly enough all the members of the former court were in favour of the defendants' construction of the section; all the members of the latter in favour of that contended for on behalf of the Crown. The judges of the Queen's Bench were of opinion that it could not be imagined that the propriety of giving such a power escaped the consideration of the Legislature when the special provisions of the Queen's Remembrancer's Act were framed; that there might be, and probably were, considerations which might render such a power inexpedient in revenue suits; and that they could not understand the policy of intrusting to the Lord Chief Baron and two or more barons of the Exchequer power to determine whether or not the Court of Error in the Exchequer Chamber, and the House of Lords, should have jurisdiction to entertain an appeal against a judgment of the Exchequer in granting, or refusing, or discharging a rule for a new trial. The judges of the Common Pleas were of opinion, that the objection urged by the defendants, that it could not have been intended to give legislative authority to the Court of Exchequer was not well founded, inasmuch as there were numerous instances of similar delegations; for instance, the cases in which towns and other local communities were allowed to determine, by the voice of a majority, whether certain acts of Parliament for local government should or should not be put in force within the limits in which the inhabitants reside; that the venue "*practice of the court*" included "*error*;" that one member of the practice of the Court was the proceeding by which the judgment of the Court might be stayed, and the execution of the Court put off until it was determined whether the judgment pronounced by the Court was right or not; and that the understanding to be gathered from words with respect to practice was, that a proceeding by way of error or appeal is part of the practice on the side of the court in which the process originates.

Thus, the majority of the judges forming the Court of Error held that that Court had no jurisdiction to entertain the appeal, and that the Court of Exchequer had been mistaken in its construction of the 26th section. It appears to have been taken for granted at once, and without discussion, by the Exchequer, that they had the power. The case was then taken up by the Crown to the House of Lords; the same arguments on either side were urged before that tribunal, and eventually four of the law Lords (Lords Westbury, St. Leonards, Kingsdown, and Chelmsford) agreed in opinion with the four judges of the Queen's Bench; Lords Wensleydale and Cranworth with the three judges of the Common Pleas; so that the decision of the Exchequer Chamber was affirmed, and consequently the judgment against the Crown held to be final. With reference to one of the arguments of the counsel for the defendants, viz. that at all events

the barons had no power to make rules applicable to a pending proceeding, Lord Westbury observes—

"This argument is not, in my opinion, well founded. Many of the enactments contained in the Queen's Remembrancer's Act are so worded as to be applicable at once to pending proceedings. If, therefore, these rules are warranted by that statute, there can be no longer injustice in making them apply to pending proceedings, so long as they apply equally and impartially to both sides. Still, it is a subject of deep regret that any rules should have been made expressly with a view to the determination of a particular case. Four years had elapsed since the passing of the Queen's Remembrancer's Act, and the necessity of these rules had never occurred to the barons of the Court of Exchequer. On the eve of the argument of the motion for a new trial in this important case, the rules in question were made, without the time necessary for due deliberation. The result is, that the efforts made to settle a question of the gravest importance, and most essential for the guidance of the Government of the country, and regarded with great expectation, have been rendered abortive, or rather, to speak more correctly, the *mons parturiens* of this great cause, raised with so much labour and expense, will produce nothing but the ridiculous issue of some discordant opinions on the meaning of the word 'practice.'"

Lord Chelmsford also, in his judgment, expresses regret, that the rules should have been made by the barons without more consideration as to their power of making them, and also that they should have been made to affect a pending case. And there the matter ends for the present—ten judicial opinions against the views propounded by the counsel for the Crown, seven in their favour. We observe it stated in the public prints, that the Government has given up *The Alexandra* to its owners, who, we presume, will make a claim for the loss and expense they have sustained by her long detention.

In conclusion, we would call attention to a treatise^o on the Foreign Enlistment Act, written by Mr. Gibbs. This little publication enters upon the policy and the interpretation of the statute, and was written previously to the discussion in the case of *The Alexandra*, and, as the author tells us in the Preface, in the hope of supplying materials for that discussion, and of contributing towards the formation of a just and dispassionate public opinion upon a question of difficulty. Any one who reads his pamphlet must thoroughly understand the question, and can form his own opinion upon the statute.

THE Report of the Charity Commissioners, which we print at full length this week, shews how well the recent acts, giving increased jurisdiction to the Charity Commissioners, have worked.

Applications to the Court of Chancery have very much diminished; in fact, we presume that they are only necessary in cases of a contentious character, as where difficult questions of construction arise, or where the assistance of the Court is required to stay, by injunction, proceedings injurious to the property of charities.

The jurisdiction given by earlier acts to county courts seems almost to have fallen into disuse, for while in the year 1859 there were 146 authorised applications to the county courts, there were only seven in the year 1861, one in the year 1862, and one in the year 1863.

The Charitable Trusts Acts, however, still require

* The Foreign Enlistment Act, by Frederick Waymouth Gibbs, C. B.—Ridgway & Co.

some amendment. The commissioners, in their Report, allude to one of a very important character, which would in many cases be highly beneficial. At present, the board cannot exercise their jurisdiction, except upon the invitation of certain prescribed parties; but as these parties may have interests opposed to those of the charity, it is obvious that this restriction should be abolished.

Again: it seems that the commissioners have great difficulty in obtaining a regular delivery of the accounts of the receipts and expenditure of charities; and, as it is highly desirable that these accounts should be regularly sent in, Parliament might usefully confer upon the commissioners summary means of enforcing their delivery, by attaching penalties to their omission.

The acts, we think, require also an amendment, which the commissioners do not, in their Report, suggest.

By the Charitable Trusts Act, 1853 (except where the Attorney-General proceeds *ex officio*), before any suit can be instituted by any person as to a charity, notice of the proposed suit, explaining its objects, must be transmitted to the board, and their order or certificate must be obtained, authorising or directing such suit or other proceedings to be commenced. (Sect. 17).

Now, although this section is in some respects very useful, as preventing much litigation, which might be commenced at the expense of, and without any benefit to, the funds of charities, there are, nevertheless, some exceptional cases, in which the necessity of obtaining the certificate or order of the board to institute proceedings amounts to a denial of justice.

Take, for instance, the case where it is essential in order to protect the property of a charity, that an injunction should be at once obtained against a person about to do an act of irreparable damage to it. Before access can be obtained to the commissioners, and their certificate or order procured, the damage may have been done, and the expense incurred in laying the matter before the commissioners entirely thrown away.

This is not an imaginary case, but one which has happened, and doubtless may happen again.

There seems to be no reason why, in cases which do not admit of delay, such as those in which injunctions are sought on behalf of charities, suits should not, under some sufficient safeguard, be commenced without the authority of the commissioners.

STAMP DUTIES ON SETTLEMENTS.

WITH little or no observation on the part of the legal profession, and hitherto without any but a few casual remarks in the House of Commons, a bill is being hurried through Parliament, having for its object, among others, to impose an *ad valorem* duty on settlements of definite and certain sums of foreign or colonial currency, or shares of stocks or funds of foreign or colonial governments, states, corporations, or companies; and on settlements of any principal sums secured or contracted for by, or which may become due and payable upon, any bond, debenture, policy of insurance, covenant, or contract, which shall be settled or agreed to be settled, or on settlements of such bonds, debentures, policies, covenants or contracts, or assignments or transfers, by way of settlement, of such instruments, or agreements for such settlements; with a proviso, that the duty shall not be payable where the subject of any settlement shall be a policy of insurance, and there shall not be any certain covenant, contract, or provision, made for keeping up such policy. The bill referred to is the Customs and Inland

Revenue Bill, as amended in committee; the clauses referred to are the 11th and 12th, and the object of the present article is to draw attention to them, to point out the existing settlement duties, to explain what effect the bill will have upon them if it should be allowed to pass into law, and to suggest for consideration a scheme for their revision.

With reference, then, to the existing duties on settlements, it should be premised that they are the *exception to the rule*, and not the rule itself. Strictly speaking, there are not any settlement duties, properly so called, nor does the present bill propose to impose any. There are conveyance, mortgage, bond, and covenant duties, but no settlement duty; and the most important settlements, namely, those of extensive landed estates settled in strict settlement so as to devolve with a dukedom, are chargeable with duty as deeds *not otherwise charged*.

Duty is payable upon any deed or instrument whereby any *definite and certain* principal sums of money, whether charged on land or not, or to be laid out in land or not, or any definite and certain share in the public funds, Bank of England or Bank of Ireland stock, East India stock, or stock or funds of any other company or corporation, is either settled, or agreed so to be, either in possession or reversion, either absolutely or for life, or in any other manner. The duty is 5s. per 100l. If the deed contains a settlement of any other property, or contains any other matter besides the settlement of the money or stock, it is chargeable with the additional stamp duty which a separate deed containing such matter would be liable to; and if there should be two or more instruments for effecting a settlement, chargeable with duty exceeding 35s., one of them only is to be charged with the ad valorem duty, and the other with a deed stamp; and where the ad valorem duty shall have been paid upon articles, the settlement is not to be charged over again. The exemptions from the duty are, bonds, mortgages, and other securities operating as settlements, if chargeable with the ad valorem duties on bonds and mortgages.

The duty is upon definite and certain sums of money and stock. All other settlements are exempt from the duty on settlements. A settlement of a family estate, containing rent-charges, terms for raising large sums of money, portions for younger children, and extensive powers authorizing the conversion of the estate into money, will not require any other stamp than a common deed stamp of 35s.; but if it should embrace a sum of stock which shall have arisen under the powers of sale and exchange in a former settlement, and is impressed with the character of land; or a sum of money or stock representing land taken by a railway or other company (and which such company can be called upon to replace in land), such money or stock will be liable to ad valorem duty if put into a new settlement, although the interest is reversionary, and subject to a life interest, a widow's jointure, younger brother's and sister's portions, and other charges which render it impossible to withdraw the fund from settlement; so that a very small fragment of an estate, and yet an integral portion of it, may be liable to a greater amount of duty than the estate itself. Thus, an estate worth a million of money may be settled for a 35s. stamp, whilst 1000l. in the trustees' hands arising from it will require an additional duty of 2l. 10s.

So, if a determinable, renewable, or defeasible estate or interest be settled, and a policy of insurance effected and settled, in order, as near as can be, to replace, either entirely or partially, the value of the estate when it shall determine, or to provide a fund for its renewal, or otherwise to guard against a contingency, the duty will be but 35s. In short, if the

settlement be of any other property than a *definite and certain* sum of money or stock, settlement duty will not be payable; but where the settled property is a definite and certain sum, within the meaning of the act, i. e. is unconditional and indefeasible, a uniform duty is chargeable, whether the sum settled be in possession or reversion, or be the whole interest, or a life, or partial interest.

What, then, is a definite and certain sum? A Bank of England note answers to that description, but so, in the eye of the law, does a country note of an insolvent bank; a sum of 5000l. charged on land worth 10,000l., or equally with one charged on land worth 10,000l., or imperfectly charged, or not charged at all, or secured by personal security of a solvent or insolvent debtor; a sum payable at the death of A. without interest, or payable at the same with interest in the meantime, or payable immediately; a sum of Consols immediately transferred to the trustees of the settlement; and a sum transferable at the death of A.

In a very recent case a sum was inadvertently included in a settlement; the right to it was disputed in a Chancery suit; the claim had been abandoned, and if that claim had been substantiated, there was no available fund, or ever would be, for its payment, yet the Commissioners of Inland Revenue, with knowledge of all the circumstances, adjudged an ad valorem stamp upon it as a definite and certain sum. The value of the sum of money, or of the security for it, is not taken into account; and a settlement of a sum of money may be liable to the duty though totally valueless.

If, however, the sum be of stock, then the rule is reserved, and the duty is assessed on the value of it at the market price of the day. It would be a great improvement if some means could be devised, by which the value of sums of money could be ascertained for the purpose of duty.

And whether the provision made by the settlement is only for a child during his minority, or for a son during the joint lives of himself and his father, or for a widow during her life or widowhood, or is for a husband and wife and the children of the marriage, or for any number of wives and their children in succession, precisely the same duty will be payable upon the settlement.

The exemptions from duty of definite and certain sums depend upon whether the instruments, or one of the instruments of settlement, is chargeable with the ad valorem duties on bonds and mortgages. The exemption clause is contained in the act, 55 Geo. 3, c. 184, and is incorporated with the existing act, 13 & 14 Vict. c. 97.

In the original act duties on bonds and mortgages were higher than those on settlements, now they are less by one half. Mortgages, but not bonds, require a further deed stamp in respect of the "other matter" which a settlement necessarily draws along with it, whether the settlement is contained in the instrument of mortgage or in a separate document. It seems difficult to find a satisfactory reason why a sum of money which is settled and directed to be forthwith invested on mortgage, should bear ad valorem duties of 5s. on a settlement, and 2s. 6d. on a mortgage, whilst the same sum, if invested on mortgage, with a view to the settlement, should only pay 2s. 6d. and a deed stamp. That there should be a distinction in the cases of bonds and covenants is intelligible, for these are but personal securities, and are rarely the subjects of settlement, except when given by the immediate parties to it, or by their near relations, and then, for the most part, because they have nothing else; in which cases a bond or covenant is taken for what it may turn out

to be worth; but though the distinction is intelligible, it could not have been the reason, because, as will be seen, covenants were, and still are, liable to settlement duty, whilst bonds are not, nor ever have been.

Whether a transfer of a mortgage or bond is liable to the duty is not clear. A transfer of either of these instruments is chargeable under the head bond or mortgage, with ad valorem duty, up to 1400*l.*, and beyond that sum with a duty of 35*s.*; and if any further sum be added to the sum secured, then with an ad valorem duty on the further sum. So that a transfer of a bond or mortgage for 1400*l.* would require an ad valorem duty of 35*s.*; a transfer for 1500*l.* and upwards, 35*s.*; and a transfer for 10,000*l.* with 50*l.* added, a single duty of 1*s.* 3*d.* The duty is, therefore, a limited ad valorem duty up to 1400*l.*, of the same amount as an original bond or mortgage; and probably it would be held that transfers up to that amount, or to any amount with further sums added, would be exempt from settlement duty, whilst transfers bearing a 35*s.* stamp would be liable.

Covenants are an anomaly; they were not originally exempted from settlement duty, and consequently were liable to it. The duty on them was imposed by the existing act, 13 & 14 Vict. c. 97, and the rate, where the sum secured exceeds 1400*l.*, is the same as on bonds and mortgages; but a covenant in a settlement is exempt from covenant duty, where chargeable with settlement duty; and where the sum is under 1400*l.*, there is no covenant duty; but if it is above, there is an exemption out of an exemption, which leaves the matter as it originally stood; and thus covenants are still liable to settlement duty.

Settlements containing a covenant for payment of an annuity or rent-charge, and bonds operating as settlements of any annuity, are chargeable with covenant and bond duty at 2*l.* per cent.; and the rate is uniform, whether the annuity be for life or any other indefinite period. A settlement, therefore, containing a covenant to pay a sum of money at the death of A., and to pay an annuity in the meantime as a present provision, is chargeable with settlement duty on the sum, and a covenant duty on the annuity; but the latter duty might be avoided by making the present provision payable by way of interest. So, where a settlement is made of a reversionary interest in money or stock, and a present provision is secured by way of annuity, or of a rent-charge issuing out of land, with powers of distress and entry; but in that case a covenant ought not to be inserted.

The result of the review of the existing duties is—first, that definite and certain sums only are liable to duty; secondly, that the duty will be payable on the sum, if definite and certain, though it be valueless; thirdly, that sums secured by covenant are liable, and sums secured by bonds and mortgages are not; fourthly, that it is doubtful whether transfers of bonds or mortgages are liable; fifthly, that annuities secured by covenants in settlements are liable to covenant duties, and not settlement duty; and, lastly, that the rate or amount of duty is not governed by the nature and object or duration of the settlement.

The next subject for consideration is the effect which the bill will have upon the existing duties. So far as it proposes to bring within the area of taxation foreign and colonial currency and stocks, it is not unreasonable. There is no valid reason why settlements should escape duty solely in consequence of the subjects of them being property of that description. At the same time, it must strike every reader, that settlers would scarcely hit upon the expedient of investing in foreign or colonial securities for the mere purpose of avoiding settlement duty. Possibly, in a few

cases, the duty on some small sums may have been lost to the Government by such investments, and alarm may have been created at Somerset House lest all Englishmen should place the provisions which they make for their wives and families in Spanish or Pennsylvanian bonds or the Greek loan; but there is no real cause for fear. Somerset House might well rest assured, that foreign securities would not be largely patronised, nor colonial ones very eagerly sought after. Still, the 11th clause, imposing the duty, is harmless, and perhaps may be necessary; not so, however, the 12th, which is of a mischievous tendency.

In the first place, the principle of a definite and certain sum is departed from, and any principal sum, secured by bond, debentures, covenant, or contract, as well as by a policy of insurance, is to be chargeable. A sum payable upon a contingency, and a policy pointed against the contingency, will be liable to two duties, although but one sum can become payable. Bonds will no longer be exempt from settlement duty, nor transfers of bonds, all questions as to the latter being determined in favour of the duty. Debentures are mortgages, but are to be charged, though mortgages are to remain exempt. Covenants already charged with duty on definite and certain sums, will be liable to duty on contingent sums. "Contracts" is so general a word, that it is difficult to foretell what it may cover. The general scope of the clause is to place sums secured by mere personal security upon the same footing as realised property; and in the case of contingent sums, to make them liable when, if charged upon land or other realised property, they would not be.

If it is said that the words "any principal sum" mean any definite and certain principal sum, the context shews the contrary. They must necessarily receive the same construction in the same sentence; and a sum secured by a policy is not, in any imaginable case, definite and certain; in the most ordinary one, it is contingent on the annual payment being made; and it scarcely needed the decision in *Sanville v. The Inland Commissioners* (10 Exch. 159), that a sum would be none the less contingent because collaterally secured by a personal covenant.

The object of the clause is, we are told by the Chancellor of the Exchequer, to remove "a most arbitrary distinction," that distinction being, that there is no difference between a sum of money insured by a policy and a sum of money covenanted to be paid. It is really a waste of words to attempt to answer a fallacy so transparent. There is every possible difference. But granted that such was the object of the clause, what is the meaning of it? Do the words "a principal sum which may become payable upon a policy of insurance" include a fire policy, if introduced into a settlement, or a policy on a ship, or an insurance against issue, or an indemnity policy, or, in short, a policy of insurance against any event, or for the protection, guarantee, or indemnity of any one of the numerous and multifarious matters which are introduced into settlements of determinable, defeasible, or renewable estates or interests? It would seem so. Or would a policy of insurance make any such estate or interest definite or certain which would otherwise be contingent? Or would a covenant to keep on foot a policy pointed at the contingency make it definite or certain? If not, how can it be said that a sum secured by a policy such a covenant is definite and certain? The object, no doubt, is to reach a life policy, effected simpliciter as a provision; and it is found that one man's policy cannot be taxed without another's, and that there is no distinction between one sort of policy and another. True, one policy cannot be taxed without another; but the question is, whether it is expedient to tax any; and as the interests represented by

policies are infinitely variable, whilst the only recognised subjects for taxation at present are definite and certain sums of money and stock, which policies certainly are not, it does become a very grave question whether they are proper subjects for taxation. Certainly they are not under the pretext of correcting an anomaly. As between an owner in fee-simple of land and an owner of a base fee determinable with the failure of his issue, or the owner of any qualified, conditional, determinable, or defeasible estate in fee, for lives or years, who effects a policy upon any lives, or against any event, either to replace or to provide funds for renewal of his estate or interest, how is any arbitrary distinction removed by taxing the policy which is to render his property as permanent as the circumstances will permit? And if, upon just principles, his policy cannot be taxed, upon what principle can a policy effected by one who has no estate or interest to support it except his business or profession, which will die with him, be taxed? The fact is, a policy is unlike any other description of property—can scarcely ever be called property at all, unless taken at its money value. The Chancellor of the Exchequer and the Attorney-General say it is precisely the same thing as a sum payable by instalments; but it is not so, because every instalment paid immediately forms capital, which is not the case with insurance, for all may be lost if the policy is not kept up. Again: covenants to keep on foot a policy are not equivalent to a provision for that purpose; and where there is a provision, income of property which has paid the duty, or which is not liable to it, must be diverted from the settlement in order to create the sum insured.

If, however, it is considered expedient that policies should be taxed on their nominal value, the fairest way would seem to be, to make the duty payable when they become claims, and to impose upon insurance offices having notice of settlements (as they always have) the obligation of seeing that it is paid, upon peril of not getting a legal discharge, in the same way as trustees and executors are bound in the cases of legacy and succession duty.

Scheme for Settlement Duties.

Settlements of estates to be chargeable with 5s. per 100*l.* duty on the sum raisable for portions of younger children, and if no portions are raisable, then upon a principal sum which would yield, at 4*l.* per cent., the amount of the wife's jointure, or, if not a marriage settlement, the amount authorised to be raised for portions or jointure.

Settlements of land which do not contain provisions for portions or jointure, and of all other estates or interests in land or other property, except definite and certain sums of money and stock, 1*l.* 15s.

Settlements of definite and certain sums of money and stock, including money or stock to be laid out in land (other than money or stock which has arisen from the sale of land under a former settlement, or which is otherwise applicable under a former settlement to be laid out in land), including foreign and colonial currency and stock:—

Where sums charged on land, or secured otherwise than by personal security, 5s. per 100*l.*

Where sums secured by bond, covenant, or other personal security, only 2s. 6d. per 100*l.*

Where reversionary interest in any sums of money or stock expectant upon the determination of a life or lives, without any provision in the meantime, 5s. per 100*l.*, less a deduction of 1s. per 100*l.* duty on an annuity, equivalent to interest at 4*l.* per cent. on sum, or the annual dividends on the stock.

The same, with provision in the meantime (and any

annuity secured by the settlement, or one of the settlements, to be deemed a provision, though more or less than equivalent to interest), 5s. per 100*l.*

Where it appears on the face of the settlement, or can be proved to the commissioners, that a definite and certain sum is not worth its nominal value, the duty to be taken at the actual value, and denoting stamp to be affixed.

Duty on stock to be calculated, as at present.

Settlement of any annuity secured by covenant only, or of any annuity or rent-charge howsoever secured (other than an annuity in a settlement of a reversionary interest in any definite and certain sum, &c., or a rent-charge, or other annual sum, by way of present provision for any person taking a life estate or interest in remainder, or reversion, or jointure under the settlement):—

Where the annuity or rent-charge shall be for life or lives, not exceeding three, or for a term or terms of years, determinable with a life or lives, not exceeding three, 1*l.* per 100*l.*

Where the annuity or rent-charge shall be in fee, or for any definite period, 2*l.* per 100*l.*

Exempt bonds, covenants, and mortgages where charged with settlement duties.

Exempt mortgages from mortgage and transfer duties, and make them liable to settlement duty.

Exempt covenants from all duty where not the principal or primary security.

Exempt policies from all duty.

79, Elgin-crescent, May 4, 1864.

F. P.

CALLS TO THE BAR.

THE undermentioned gentlemen were this day (Saturday, April 30) called to the Bar:—

LINCOLN'S INN.—James Johnstone, jun., Esq., B.A.; Frederick Eden, Esq.; Robert Thomas Boulton, Esq., LL.B.; William Edmeades, Esq., M.A.; Albert Osliff Rutson, Esq., M.A.; Henry John Bird, Esq., LL.B.; Sir George Young, Bart., M.A.; John Jermyn Cowell, Esq., B.A.; William Payne, jun., Esq.; Arthur Charles Humphreys, Esq., B.A.; Charles Bowyer, Esq., M.A.; Alexander Robert Pratt Barlow, Esq., B.A.; John Armstrong, Esq.; Alleck Moodie, Esq., M.A.; John Cyprian Thompson, Esq., B.A.; and Robert Wilkinson, Esq., B.A.

INNER TEMPLE.—Ernest Alexander Clendinning Schach, Esq. (holder of the studentship awarded in Hilary Term, 1864); Lazarus Threlfall Baines, Esq., LL.M.; Joseph Barratt Jacques, Esq.; Ashley Carr Glyn, Esq., B.A.; James William Handley, Esq., B.A.; Thomas Clarke Tatham, Esq., B.A.; Phillip Callan, Esq.; Thomas William Gerst, Esq., B.A.; and Peter Williams, Esq.

MIDDLE TEMPLE.—George Jacques Marie Embert, Esq.; and Irvine Edward Bainbridge Cox, Esq., B.A.

GRAY'S INN.—Robert Edward Francillon, Esq.

CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

THE Charity Commissioners for England and Wales have made their Eleventh Report; it is as follows:—

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

May it please your Majesty,

We, the Charity Commissioners for England and Wales, humbly submit to your Majesty the following Report of our proceedings during the year 1863.

There has been a continued increase in the number of special applications for the assistance or intervention of our board with reference to particular charities, 1303 such applications having been received during the past year. The numbers received in the three preceding years respectively were 1094, 1179, and 1234.

We subjoin, as in former years, a statement of the number and principal objects of the formal orders which we have had occasion to make during the year, in cases not concluded by correspondence only, or in the presence of the parties. The numbers of like orders made during the preceding year are added for the purpose of comparison:—

<i>Objects of Orders.</i>	<i>Number.</i>	
	<i>During the year 1863.</i>	<i>During the year 1862.</i>
Authorising applications to the Court of Chancery	30	18
— the county courts	1	1
— the courts of common law	6	2
Appointing and removing trustees, and establishing schemes, or for some of those purposes	351	280
Certifying cases to the Attorney-General, with a view to the institution by him of ex officio proceedings	2	8
Conveying advice to trustees for their protection and indemnity in the discharge of their official duties	57	59
Authorising sales of charity estates	151	137
— exchanges of such estates*	6	9
— building, mining, or other special leases of charity estates	165	87
— improvements of such estates, and the raising or appropriation of the necessary funds	41	35
— the compromise of disputed claims	27	6
— transfers of funds to the "Official Trustees of Charitable Funds"	610	616
For various purposes not comprised under any of the foregoing heads	165	182
	1612	1410

A large number of cases is still subject to the inquiries and consideration which must necessarily precede their final determination.

The further experience which has been acquired of the operation of the Charitable Trusts Act, 1860, which for the first time extended to our board certain important powers over endowed charities previously exercisable only by the judicial courts, particularly for the discharge and appointment of trustees, and the establishment of schemes for their government, fully confirms the anticipations of the beneficial effect of that measure. The following statement of the comparative numbers of applications authorised to be made to the Court of Chancery and the county courts for the stated objects in the year 1859, which immediately preceded the passing of that act, and in the three last years, during which it has been in force, and of the number of definitive orders made under it by our board during the latter period, will shew how large a measure of beneficial relief is already afforded by it to charitable institutions, and to how great an extent the functions of the judicial courts for the administration of such relief have been practically transferred to this board:—

* The powers of the Inclosure Commissioners to make exchanges of charity lands being more summary and beneficial than the powers vested in our board for the same purpose, such transactions are most generally referred to their cognisance.

	<i>In the year 1859.</i>	<i>In the year 1861.</i>	<i>In the year 1862.</i>	<i>In the year 1863.</i>
Number of authorised applications to the Court of Chancery — county courts	86 146	18 7	32 1	30 1
Number of orders made by the board under the direct jurisdiction created by the act 1860, for the appointment or removal of trustees, and establishment of schemes, or for some of those purposes	—	207	280	351

If so simple and inexpensive a jurisdiction has been also safely and judiciously exercised, this past experience and the future prospect of its operation must be considered very satisfactory. We venture to state only, that the publicity which must precede all our orders appears to us to be very effectual for the anticipation and exclusion of objections to which they might otherwise be subject, and that although the law has provided a great facility of appeal from such orders, and those definitely made by us before the close of the past year have amounted to no less than 138 in number, yet no instance has occurred of the exercise of that right of appeal.

The restraint of this jurisdiction arising from the provisions of the law which prohibits its exercise, except upon the invitation only of prescribed parties (whose interests may sometimes be even opposed to those of the charities) has been referred to in our previous Reports. The inconvenience of this restriction is proportionate to the salutary character of the jurisdiction which is excluded.

The entire amount of various stocks transferred to the Official Trustees of Charitable Funds during the year 1863, has been 269,488*l.* 18*s.* 11*d.*; the amount re-transferred by them during the same period principally for effecting re-investments in land, has been 14,670*l.* 1*s.* 4*d.* The total amount standing in the name of the official trustees at the end of the year was 1,634,045*l.* 17*s.* 8*d.* on 3116 separate accounts, to which the dividends are credited, and are then regularly remitted to the proper recipients.

The following statement, in continuation of those made by our former Reports, will shew the amounts of various stocks transferred to the official trustees, and re-transferred by them in each year since 1854 inclusively:—

	<i>Amount of stock transferred.</i>	<i>Amount re-transferred.</i>
In the year 1854	£8,660 16 11	—
“ 1855	21,158 17 3	—
“ 1856	118,115 4 2	£32 2 6
“ 1857	159,735 11 1	4023 11 8
“ 1858	110,417 12 1	5650 16 8
“ 1859	189,064 10 10	1436 1 9
“ 1860	202,816 17 2	1780 17 7
“ 1861	223,786 17 0	7530 9 6
“ 1862	350,131 10 2	31,998 16 11
“ 1863	269,488 18 11	14,670 1 4
Total	£1,701,096 15 7	£67,050 17 11
Deduct amount re-transferred	67,050 17 11	
Total amount of stocks standing in name of “The Official Trustees of Charitable Funds,” 31st December, 1863	£1,634,045 17 8	

Note.—The sums re-transferred represent principally the proceeds of the sale of real estate re-invested in the purchase of other real estate under orders of our board.

We have inserted in an Appendix the particulars of the stocks transferred to the official trustees during the past year, distinguishing the amounts belonging to each of the charities interested therein.

Our inspectors have been actively engaged under our direction in investigating the circumstances of various charitable foundations, particularly of several of the more important charities in and near the metropolis.

The only scheme which we have thought it desirable to prepare during the past year, with a view to its being submitted to the consideration of Parliament, is for the Grammar School at Coventry.

This scheme, promoted by the trustees of the school, with the approval of the bishop of the diocese and the principal inhabitants of Coventry, has for its object the permanent separation of the offices of rector of the parish of St. John Coventry and master of the grammar school, which were united by an act of Parliament passed in the year 1734. The objections to the continued union of these two offices, very imperfectly compatible in the same person, are apparent. The scheme for their severance, provisionally approved and certified by our board in conformity with the provisions of the Charitable Trusts Act, 1853, is set forth in the Appendix to this Report, together with an explanatory statement of the circumstances.

During the past year the particulars of 473 charitable foundations, either newly created or not previously noticed in any public record, have been ascertained, and are in a course of registration in our office.

The number of returns which we have received during the year of the accounts of the receipts and expenditure of charities has been 14,822.

We have had occasion to notice in our former Reports the difficulty of obtaining the regular delivery of these accounts, in the absence of any summary means of enforcing them, and of any penalties attached to their omission.

Considerable progress has been made in the compilation of the general digest of endowment charities, referred to in our former Reports.

It already comprises, so far as it has been practicable to extend it by laborious inquiry, all the local or parochial endowments of a considerable number of counties, with the objects to which their incomes are distributively applicable; and the collection of the same particulars in the remaining counties, and of the general charities of which the application is not confined to particular parishes or limited districts, is also in regular progress. Although such records can be made only approximately complete, and some particulars as of the endowments of various religious denominations separated from the Established Church, can be very imperfectly stated, we still hope that this digest will be found of much practical utility as well as interest. It contains all the information obtainable for its purposes from the Reports of the former Commissioners of Inquiry; from the returns of account made to our office; from all special applications and communications made to our board; from the Reports of our inspectors and from the local knowledge of incumbents of parishes, to whom extracts of it have been most generally submitted for any necessary extension or correction; and from accidental sources.

We insert in the Appendix a summary of the digest of the parochial or local charities of ten counties, and of the cities of London and Westminster, shewing their gross incomes, and the objects to which they are applicable.

The total gross yearly income of the charities which it comprises amounts to 430,720*l.* 11*s.* 1*d.*, which exceeds the income assigned by the Reports of the former Commissioners of Inquiry to the same class of endow-

ments, in the same localities, by somewhat more than 150,000*l.*, the former amount having been 280,693*l.* 10*s.* 2*d.*

It is proper to make some observation on the constitution of this large excess.

An income of upwards of 31,000*l.* which enters into it is derived from charities not included in the Reports of the former commissioners, although of prior foundation.

A considerable addition to the former income of many charities comprised in those Reports has resulted from legal proceedings instituted since their date for the restitution of charitable rights which had been in suspense, and a yearly income of 22,420*l.* 3*s.* 2*d.* is derived from new charities founded since the former Reports in the proportions of 11,780*l.* 9*s.* 4*d.*, arising from foundations made by will, and 10,639*l.* 13*s.* 10*d.* from charities founded by deed or other acts, *inter vivos*.

The remainder of the increase is due in a very principal degree to the improved productiveness of the endowments, the value of which, especially in the metropolis and its vicinity, has been very largely augmented, resulting in some instances, especially of charities applicable within the city of London, in a disproportion of the endowments to the purposes or objects of the foundations, which may well deserve at no distant period the interposition of the Legislature to regulate their application.

All which we humbly report to your Majesty.

In witness whereof, we have directed our official seal to be hereto affixed, this 27th day of February, 1864.

(L. S.)

Imperial Parliament.

HOUSE OF LORDS.—Thursday, April 28.

The royal assent was given by commission to (amongst others) the Bills of Exchange and Promissory Notes (Ireland) Bill, and the Conveyances (Ireland) Bill.

The Marquis of Westmeath moved the third reading of the Punishment of Rape Bill.

Lord Wodehouse said, on a former occasion he had given notice of an amendment which he intended moving on the third reading. The object of his amendment was to render it discretionary, and not compulsory, upon judges to order the infliction of the punishment of flogging in the case of a conviction for rape. That object would be obtained by substituting the word "may" for "shall" in the bill; and this amendment he now moved.

Lord Wensleydale opposed the amendment.

The Lord Chancellor thought, that if this punishment were made compulsory, there would be a greater disinclination on the part of juries to convict than there was at present. He had consulted the learned judges on the subject, and they were decidedly of opinion, that the infliction of this part of the punishment should be left discretionary with the judge to order. He had received a letter from the Lord Chief Justice, in which he stated, that he was persuaded the reluctance on the part of the juries to convict did not arise from any want of abhorrence of the crime itself, but from the frequency of cases in which charges of this nature were preferred, either wholly without foundation, or where the woman had turned round upon the man to whom she had given encouragement.

The Marquis of Westmeath said, after what he had heard, he should be unwilling to do anything that would be likely to endanger the result of trials of this character. He would, therefore, assent to the amendment.

Earl Grey said it appeared to him, that the arguments relied upon by the learned judges in favour of this discretionary power went directly to a contrary conclusion. It appeared, that the indisposition of juries to convict did not arise from any want of horror of the crime, but from the belief that the charge was frequently made without foundation.

The House then divided upon the amendment, and there were—

Contents	55
Non-contents	23
Majority	33

The amendment was accordingly agreed to; and on the question that the bill do pass,

The Marquis of *Westmeath* entered his earnest protest against Parliament having taken away the power of capital punishment in cases of this kind, when more than one person was concerned.

The bill was then passed.

The Regius Professorship of Greek (Oxford) Bill, after some debate, was read a second time.

The Joint-stock Companies (Foreign Countries) Bill was read a third time, and passed.

The Registration of County Voters (Ireland) Bill was read a second time.

Monday, May 2.

The High Court of Bombay Bill passed through committee.

Tuesday, May 3.

The High Court of Bombay Bill was read a third time, and passed.

HOUSE OF COMMONS.—*Thursday, April 28.*

On the motion for going into committee of supply, Mr. *Peacocke* moved, "That the instructions contained in the despatch of the Duke of Newcastle to Sir R. P. Wodehouse, dated the 4th November, 1863 (relative to the Tuscaloosa), and which remain still unrevoked, are at variance with the principles of international law." After a long debate, the resolution was negatived by 219 to 185.

Friday, April 29.

Mr. *P. Wyndham* rose to ask the Secretary of State for the Home Department if it was the intention of the Government to bring in a bill this session to amend the Salmon Fisheries Act, 1861. Sufficient funds to carry out the provision of the act could not be raised by the voluntary principle. Those who fished for profit or pleasure ought to be compelled to contribute towards preserving the waters.

Mr. *F. G. Baring* said the matter was under the consideration of the Government, who hoped to be able to bring in a bill upon the subject this session, though they would not pledge themselves so to do.

Mr. *H. Berkeley* moved—"That this House will upon Monday next resolve itself into a committee to consider of an address to her Majesty, praying that her Majesty will be graciously pleased to direct adequate compensation to be made to William Bewicke, of Threepwood Hall, in the county of Northumberland, for the pain, degradation, anguish of mind, and consequent ill-health, he has suffered in being confined for twelve months in a prison as a felon on a charge since proved to be false; for the confiscation of his goods, chattels, family pictures, plate, and library, thus inflicting upon him an irreparable injury; also for the heavy pecuniary loss he has suffered in prosecuting and bringing to justice the persons who had conspired against him, such having been the only means by which eventually he was enabled to establish his innocence; and that this House is prepared to assure her Majesty that it will make good the same."

After a debate of some length, an amendment was carried, to leave out the words after the word "that," in order to insert these words:—"A select committee be appointed to consider the petition of Mr. William Bewicke, of Threepwood Hall, in the county of Northumberland, on the 28th April, 1863, and to report its opinion to this House as to whether Mr. Bewicke is entitled to any and what compensation."

Mr. *Digby Seymour* then called attention to the extensive employment of climbing boys in sweeping chimneys, and the systematic violation of the "Act for the Regulation of Chimney Sweepers and Chimneys" (3 & 4 Vict. c. 85), and asked the Secretary of State for the Home Department whether it was the intention of her Majesty's Government to introduce any bill during the present session founded on the recommendations of the Children's Employment Commission, 1862.

Sir *G. Grey* believed that, as stated by the hon. gentleman, there was an extensive evasion of the law. The attention of Government had been directed to the subject, and the Earl

of Shaftesbury, at whose suggestion the royal commission had been appointed, was, in conjunction with the Government, about to introduce a bill on the subject in the other House.

The Report on the Penal Servitude Amendment Bill being brought up to be considered, Mr. *Whitbread* proposed a clause, which, after some debate, was withdrawn.

Mr. *Hunt* moved the alteration of the fourth clause, to the effect, that if the holder of a license, unless prevented by illness or other unavoidable cause, did not report himself personally to the chief police station of the borough or police division to which he may go within three days after his arrival therein, and subsequently once in each month at the time, place, and manner, and to the person the chief officer shall appoint, or shall change his residence without having previously notified the same to the police station to which he last reported himself, he shall be deemed guilty of a misdemeanour, and may be summarily convicted thereof, and his license shall be forthwith forfeited by virtue of such conviction, but he shall not be liable to any other punishment by virtue of such conviction.

The clause as amended was agreed to.

Some further verbal amendments having been agreed to, the Report was adopted.

The Civil Bill Courts (Ireland) Bill, as amended, was considered, and an amendment, proposed by Mr. *O'Hagan*, was agreed to.

The Attorney-General obtained leave to introduce a bill to indemnify certain persons from any penalties which they might have incurred by sitting as members of the House of Commons while holding the office of Under-Secretaries of State.

The Attorney-General moved for leave to introduce a bill to amend the process, practice, and mode of pleading in the superior courts of common law at Dublin.

Mr. *Whiteside* said, that unless coerced to that course, he should never consent to the introduction of this bill.

Leave was given to bring in the bill.

Monday, May 2.

Mr. *Baxter* asked the Chancellor of the Exchequer whether, after the expression of opinion in the debate on the Bank Notes (Scotland) Bill, he meant to proceed with the Bank Acts Bill for Scotland.

The Chancellor of the Exchequer said, that during the recent discussion a general opinion had been expressed on the part of the representatives of Scotland that it would be better not to deal partially with any isolated point belonging to the currency or banking; and as no great public interest was involved in going forward with a bill of so limited a scope, he would defer to that feeling, and not ask the House to proceed further with the bill.

Mr. *Carnegie* asked the Lord Advocate whether it was the intention of the Government to appoint a royal commission to inquire into the nature and working of the law of hypothec as regarded agricultural subjects in Scotland.

The Lord Advocate replied in the affirmative.

Mr. *Carnegie* said, in that case he would not proceed with the motion of which he had given notice.

The amendments to the Customs and Inland Revenue Bill were considered, and some verbal amendments introduced.

Mr. *Malins* proposed an amendment in the clause—to strike out that part of it which is intended to impose an ad valorem duty on settlements of policies of insurance. The Court of Exchequer had decided, that such settlements were not liable to the duty. If a man, on his marriage, effected a settlement of a policy for 5000*l.* upon his wife, it was proposed by the bill to charge that with duty, the same as if it was 5000*l.* Consols, although such policy on the day it was made was worth nothing. It was true that the bill provided, that the duty should only be charged where there was a covenant to keep up the premiums. But sometimes the covenant was, that the premiums should be paid out of the wife's money, so that in that case the money would be taxed twice over. He proposed to omit that part of the clause which would impose this new tax.

The Chancellor of the Exchequer said, the object of the clause was to remove a most arbitrary distinction. If there was a covenant in the settlement to keep up the premiums, that covenant was equivalent to a bond. Why, then, should the bond be taxed, and not the policy, both being the subject of settlement? The judgment of the Court of Exche-

quer, to which the hon. and learned gentleman had alluded, was not a judgment which the Government could appeal against. If that course had been open to them, they would have obtained the judgment of a higher tribunal. The law officers of the Crown had given an opinion to the effect, that life policies were chargeable, and they had recommended the Government to continue to charge the duty. The practice, therefore, had been to charge the duty, leaving the parties to rely on the judgment of the Court of Exchequer, if they pleased. No one had done so, however, thereby indicating the general opinion as to the worthlessness of the judgment. The taxation upon settled property was exceedingly low as compared with unsettled property. It was only 5s. per cent., and it should be borne in mind, that the settlements of those policies escaped the probate duty, which amounted to 2l. 10s. per cent.

Mr. Hunt thought the amendment of the hon. and learned member for Wallingford (Mr. Maitnes) ought to be adopted. He was surprised that the law officers had given any such opinion as that stated by the Chancellor of the Exchequer. It seemed to him to be unconstitutional.

The Attorney-General said, that if the husband made a settlement out of future profits of 5000l., to be payable at his decease, that settlement would pay the duty; but if the settlement were a policy, it would not. This was an anomaly that the bill proposed to remove.

After a short discussion, the House divided, and the numbers were—

For the clause	161
For the amendment	124

Majority for the clause 37

The Chancellor of the Exchequer moved an amendment, that the stamp duty on powers of attorney given by seamen to receive their wages should be reduced to 1s.

The amendment was agreed to.

The Penal Servitude Acts Amendment Bill was read a third time, and passed.

The Civil Bill Courts (Ireland) Bill was read a third time, and passed.

The Promissory Notes and Bills of Exchange (Ireland) Bill passed through committee.

The Lord Advocate obtained leave to bring in a bill to prevent the discharge of impure water from manufactories into rivers in Scotland.

The Lord Advocate also obtained leave to bring in a bill to facilitate the administration of trusts, and to regulate the powers of trustees in Scotland.

The Admiralty Lands and Works Bill was read a first time.

Tuesday, May 3.

Mr. A. Mills asked the First Commissioner of Works when the bill for the concentration of the courts of justices, which, on the 22nd April, he stated would be brought forward in a few days, would be introduced by the Government.

Mr. Copey said the introduction of his bill depended entirely upon the introduction of another bill for supplying funds, which must be brought forward by another member of the Government; and he was, therefore, unable to give any satisfactory answer.

Mr. Paull asked the Secretary of State for the Home Department, whether his attention had been drawn to a bill, intitled "A Bill to amend the Constitution, Practice, and Procedure of the Courts of the Island of Jersey," purporting to deal with the judicial establishments and taxation of the said island, and asked whether such bill had been introduced with the concurrence and approval of her Majesty's Government.

Sir G. Grey said he had stated his views respecting the bill on the second reading. Since then he had suggested to the hon. member in charge of the bill, that it should be postponed until some correspondence with the Lieutenant-Governor had been published; and his hon. friend (Mr. Locke) had agreed to act upon that suggestion.

Mr. W. Ewart moved the appointment of a select committee to inquire into the expediency of maintaining the punishment of death.

Lord H. Lennox moved as an amendment, that a select committee be appointed to inquire into the operation of the laws relating to capital punishment.

Mr. Mitford seconded the amendment, because it opened a wider field for inquiry than the motion.

Mr. Neate, who had upon the paper notice of an amendment for a royal commission to inquire into the provisions and operation of the laws under which the punishment of death is now inflicted, said he did not think the terms of the motion, or of the amendment of the noble Lord, would give as comprehensive a scope to the inquiry as the circumstances warranted.

After some debate, the motion and Lord H. Lennox's amendment were severally withdrawn.

Mr. Neate then moved as a substantive resolution, "That an humble address be presented to her Majesty, praying that she will be graciously pleased to issue a royal commission to inquire into the provisions and operation of the law under which the punishment of death is inflicted, and the manner in which it has been executed in the United Kingdom, and to report whether it is desirable to make any alteration therein.

After some observations from Mr. Denman and Sir G. Grey, the motion was agreed to.

Leave was given to Mr. Ferrand to bring in a bill for compensating families of persons killed by boiler explosions through the neglect or default of the owner. The bill was read a first time.

Mr. Paull moved the second reading of the Insolvent Debtors Bill, the object of which is to extend the benefit of the present law to debtors under 20l.

After some debate, the bill was read a second time, and ordered to be committed on the 8th June.

The Customs and Inland Revenue Bill was read a third time, and passed.

On the order of the day for going into the Partnership-law Amendment Bill, Mr. T. Baring moved that the House do go into committee that day six months.

Mr. Hubbard and Mr. Buchanan having spoken against, and Mr. Goschen and Mr. Alderman Salomons in favour of, the principle of the bill, the amendment was withdrawn, and clauses 1 and 2 were agreed to.

Mr. T. Baring proposed an amendment to clause 3, and after some debate, the committee divided—

For the amendment	12
Against it	20

Majority against the amendment .. 8

Wednesday, May 4.

The House went into committee on the Chief Rents (Ireland) Bill, and the clauses from 1 to 12 were agreed to, except clause 4, which, on the motion of Sir C. O'Loghlen, was omitted from the bill.

COURT OF QUEEN'S BENCH.

EASTER TERM, 27 VICT.—April 29, 1864.

This Court will, on Tuesday the 10th, and Wednesday, the 11th days of May next, hold sittings, and will proceed in disposing of the business then pending in the New Trial, Special, and Crown Papers, and will also give judgment in cases then standing for judgment.

BY THE COURT.

May 3.—The Lord Chief Justice announced that a learned judge would sit in the Bail Court during the last four days of term. A list of selected motions would be taken there.

OXFORD, May 2.—The trustees of the Eldon testimonial request the members of the University of Oxford to take notice, that the thirteenth election of an Eldon Scholar will take place on Friday, the 1st July next, at Lord Redesdale's room, in the House of Lords, at three o'clock P.M., previous to which day all applications must be left at the office of the secretary, sealed up, and indorsed, "Eldon Scholarship.—Candidate's application," and with the candidate's name also indorsed. The rules and by-laws of the foundation, together with the forms of certificate and declaration required, are deposited with the senior tutor of each college and hall, and with the Registrar of the University.

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By Order of the Directors,

WM. McKEWAN, General Manager.

At the ANNUAL MEETING of the PROPRIETORS, held on THURSDAY, the 4th February, 1864, at the LONDON TAVERN, Bishopsgate-street, the following Report for the Year ending the 31st December, 1863, was read by the Secretary.

WILLIAM NICOL, ESQ., M.P., IN THE CHAIR.

REPORT.

The Directors, in submitting to the Proprietors the Accounts of the Bank for the Half-year ending the 31st December, 1863, have much satisfaction in reporting that the Net Profit for the Six Months, after deducting all charges, amounts to 84,325*l.* 0*s.* 2*d.*, which, added to 14,343*l.* 3*s.* 4*d.* brought forward from the last Account, results in a total of 98,668*l.* 3*s.* 10*d.*

Out of this Sum the Directors recommend that the usual Dividend of 61. per Cent., together with the Bonus of 61. per Cent., be declared for the Half-year, making, with the Dividend paid in August last, 181. per Cent. for the Year. They further propose to carry 10,000*l.* to the Reserve Fund, making that Fund 100,000*l.*, leaving 16,668*l.* 5*l.* 10*d.* to be carried forward to Profit and Loss new Account.

In consequence of the great increase of the Business of the Bank, the Directors consider it advisable further to increase the Capital of the Company, by the issue of 7500 New Shares, to be offered, *pro rata*, amongst the Proprietors, as they appeared in the Register on the 3rd instant, the day where the Transfer Books of the Company were closed; such Shares to be issued at the price of 10*l.* each, being a premium of 20*l.* per Share. Full particulars of the Issue will be transmitted by Circular to each Proprietor.

This operation will produce 300,000⁰⁰., out of which 150,000⁰⁰., will be added to the Capital of the Company, and 150,000⁰⁰., (being the Premium on the Shares), will be added to the Reserve Fund, raising the former to 750,000⁰⁰., and the latter to 250,000⁰⁰.,—together One Million.

The Directors regret having to announce the decease of HENRY OVERTON, Esq., for many years one of the Auditors of the Bank. This creates a vacancy in the Auditorship, which it is in the power of the Meeting to fill up.

The Directors retiring by rotation are—

PHILIP PATTON BLYTH, Esq.,

EDWARD HUGGINS, Esq.,

and WILLIAM LEE, Esq., M.P.,

all of whom are eligible for re-election, and offer themselves accordingly.

The Dividend will be payable at the Head Office, or at any of the Branches, on and after Monday, the 15th instant.

BALANCE SECRET

Of the London and County Banking Company, 31st December, 1863.

[illegible]

We, the undersigned, have examined the foregoing Balance Sheet, and have found the same to be correct.

London and County Bank, 28th January, 1864.

(Signed) JOHN WRIGHT,
R. H. SWAINE, } Auditors.

Printed by HENRY HANSARD, at his Printing Office, in Parker Street, in the Parish of St. Giles-in-the-Fields, in the County of Middlesex, and published by HENRY SWEET, of No. 3, CHANCERY LANE, and RICHARD STEVENS, of 26, BELL YARD, LINCOLN'S INN, at the OFFICE, No. 39, BELL YARD, LINCOLN'S INN.—Saturday, May 7, 1864.

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No. 1437, OLD SERIES.—Vol. XXVIII.

MAY 14, 1864.

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Share Capital	£1,000,000
Less, paid up and included in the above sum	160,935
	839,065
Annual Income from Investments and Premiums (increasing yearly)	165,000
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	£	£		Years.
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1558	5000	1157	1857	45
6	5000	1693	1857	44
941	2500	771	1858	68
646	5000	1742	1858	54
13	5000	2091	1859	61
831	5000	1433	1860	37
870	4000	1438	1860	50
643	3000	1149	1860	37
2871	5000	907	1861	38
2907	5000	1180	1862	36
1751	1000	318	1862	48
309	5000	1899	1862	40

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LONDON AND COUNTY BANK.—NOTICE is hereby given, that a BRANCH of the London and County Bank was OPENED this day, at Nos. 324 and 325, HIGH HOLBORN, near to Middle-row, under the Management of Mr. L. R. SYKES.

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THE JURIST.

LONDON, MAY 14, 1864.

THE power which has been given to judges by some recent statutes to add the punishment of whipping to that of imprisonment or penal servitude, is a remarkable feature in legislation. The latest of these statutes is the Punishment of Rape Bill, introduced into the House of Lords by the Marquis of Westmeath, and which passed its third reading in that House on the 28th April. It provides, that any person convicted of the crime of rape may, in addition to any punishment awarded by any law now or hereafter in force, be twice or thrice privately whipped; that any person convicted of an assault with intent to commit rape may, in addition to the other punishment, be *once* privately whipped; and thirdly, "Where any person shall act, abet, or assist another to commit the crime of rape, such person shall be liable to the same punishment as the principal, or to any mitigated punishment as the Court may award."

The punishment in respect of the two first offences—rape, or assault with intent to commit rape—can only be applicable to males, but there is no reason why a female should not be guilty of the aiding and abetting others to commit rape; and taking this 3rd section by itself, the judge would have power to order a female to be whipped; but the 4th section provides, that the act shall be construed with, and subject to, the provisions of the 26 & 27 Vict. c. 44; and sect. 1 of the latter act provides, that "the offender, if a male, may be whipped," &c. No doubt, therefore, this restriction of the punishment to males is contained by implication in the 4th section of the act just passed through the House of Lords, as well as the other provisions of the earlier statute limiting the number of strokes at each whipping to be twenty-five where the age does not exceed sixteen years, and directing that a birch rod be the instrument used.

Lord Westmeath's bill has yet to pass the House of Commons, but we do not suppose it will be thrown out there. It is not a pleasant reflection, that in these days, in which civilisation is so advanced, and so much is really and earnestly done to improve and reform the classes in which criminal offenders are contained, it should be considered necessary to take a retrograde step, and impose a punishment which many think only applicable to brutes. But if men will behave like brutes they must be treated as such; if they are not deterred by any manly feeling, or even by fear of the ordinary punishments, from committing rapes or other acts of the grossest violence, any punishment short of death, which is likely to deter them, must be inflicted. The act of last session (26 & 27 Vict. c. 44) was passed, because the punishments imposed by the 24 & 25 Vict. c. 100, were found insufficient to check the numerous garrotte robberies which kept many of the inhabitants of the metropolis in a state of terror; and it appears to have effected its object. In fact, we believe that most men are afraid of physical pain, and that the punishment being carried out privately increases the dread of it.

It is very right that women should in every possible way be protected from the brutal violence to which they are so often exposed; and we are far from objecting to Lord Westmeath's bill; but we think there should be a difference in the punishment, regulated by the circumstances of the crime. Where, as in some recent instances, five or six men are parties to a rape, and the unhappy woman is half killed by their outrages upon her person, no amount of pain inflicted upon them by whipping can be too severe. If fifty lashes are not too much in an ordinary case of rape, double that number are not too much where the crime is of so aggravated a nature. Again: where the female is of tender age, and possesses less strength than a full-grown woman to resist violence, the whipping should be more severe. We make these observations upon the assumption that a criminal does not undergo any serious risk to life, or even any permanent bodily injury, by suffering a whipping of fifty lashes, the extreme number allowed by the statute. If he does, then, of course, that number would be reserved by the judge, as a punishment for the more atrocious kinds of rape, and a less number inflicted for lighter cases.

At present the punishment of whipping is, in the case of adult criminals, limited to cases where violence is done to the person, and is, we presume, so limited, upon the principle, that those who do violence to the persons of others shall, as part of their punishment, have violence done to their own persons; but it is not easy to see why the punishment should not be inflicted in the case of any serious crime, if it is likely to deter men from committing it: if criminals fear physical pain, the more generally this punishment is applicable, the more likely are they to be deterred from crime. Why should whipping be limited to persons under the age of sixteen years, in the several cases in which it may be awarded under the provisions of the 24 & 25 Vict. c. 100? It was thought advisable by the Legislature to extend it, by the 26 & 27 Vict. c. 44, to persons above that age; and Lord Westmeath's act, if passed, is to the same effect. The punishment is to be privately inflicted, so that no feeling of delicacy can interfere with its application to full-grown persons; and therefore it is difficult to say why it should not be inflicted in all cases of serious crime—the judge, of course, having a discretion as to its infliction, which he would regulate by the circumstances of the particular case, and the previous character of the offender.

The fact that the Legislature has thus considered it necessary to introduce the punishment of whipping, affords an argument against those who are so eager to abolish it in the case of soldiers and sailors. By the present Mutiny Acts, not more than fifty lashes can be awarded; nor even that, or any number of lashes, can be awarded by a regimental court-martial without the consent of the general commanding the district. The 22nd section of the Mutiny Act runs thus:—

"Any court-martial may sentence any soldier to corporal punishment, not extending to life or limbs, for desertion, or for disgraceful conduct, misbehaviour, or neglect of duty, but no sentence of corporal punishment, awarded by a regimental court-martial, shall, except in the case of mutiny or gross insubordination,

be put in execution in time of peace without the leave in writing of the general or other officer commanding the district or station in which the court may be held; and no sentence of corporal punishment shall exceed fifty lashes." And sect. 24 authorises her Majesty, or the general or other officer authorised to confirm the sentences of court-martial, to mitigate the sentence of corporal punishment.

Thus, the Legislature has provided that such punishment should not be inflicted without due consideration, and inquiry into the case; and although some persons are fond of declaiming against its infliction upon soldiers or sailors in any case, we cannot think that all the experienced officers, who declare that the power of awarding the punishment is necessary in order to preserve discipline, are unfeeling martinets. It is impossible to provide against men of bad character enlisting; and officers only can tell how such men, unless they are checked by the fear of punishment, will corrupt and destroy young soldiers. The difference between the soldier or sailor and the civilian is, that in the case of the former the punishment is inflicted in the sight of his comrades, in that of the latter it is private. In the former case, an immediate warning to others may be salutary, and, therefore, the publicity of the punishment expedient. If, however, as is urged, such publicity destroys all shame in the soldier punished, and renders him callous for the future, it is worth consideration whether he also should not be flogged in private.

There is no doubt that the feelings revolt against the infliction of corporal punishment upon adults, but if adult criminals do not object to imprisonment, or, indeed, like its good fare and quiet life for a season, and if they are lost to all sense of shame, how are they to be treated? The judge who tries them will always exercise a discretion as to its infliction, regulated, as we have observed, by the character of the offence and of the criminal. It is in human nature to fear pain; and where pain only will deter from crime, it is mercy to inflict it.

THE greatest evils which prevailed under the old practice of the Court of Chancery arose from the Court taking such extreme care of the interests of suitors, that they were overwhelmed with the costs thereby occasioned. This tendency of the Court is still to be seen, and requires to be watched carefully, and when it becomes oppressive, to be from time to time corrected by the Legislature. A bill, having this object in view, intitled "An Act to amend the Settled Estates Act, 1856" (19 & 20 Vict. c. 120), has been brought into Parliament by Lord Cranworth, and will, when it passes, effect much good, by saving unnecessary expenses. It seems, that under the 10th section of the Settled Estates Act, it was enacted, "That when the Court of Chancery should deem it expedient that any general powers of leasing any settled estates, conformably to the said act, should be vested in trustees, it might, by order, vest any such power accordingly either in the existing trustees of the settlement, or in any other persons, and that in every such

case the Court, if it should think fit, *might impose any conditions* as to consents or otherwise on the exercise of such power."

Now, in order to protect the interests of persons interested in the settled estates affected by such powers, it became the practice of the Court to require that leases granted in pursuance of a power vested in any trustees or other persons, under the provisions of the said 10th section of the act, *should be settled by the Court or by a Judge thereof; or otherwise should be made conformable with a model lease deposited in the chambers of the judge.* The introduction of such a condition has been found to occasion delay and expense, and so to create great difficulties in carrying into execution the objects of the act; and as such conditions may in general be safely omitted, it is proposed, therefore, by Lord Cranworth's bill, that in orders to be hereafter made no such condition shall be inserted, save only in any case in which the parties applying for the order *may desire it*, or in which it shall appear to the Court that there is some special reason rendering the insertion of such a condition necessary or expedient.—(Sect. 1).

Moreover, in all cases of orders already made in pursuance of the 10th section of the act, in which any such condition has been inserted, it is proposed that any party interested may apply to the Court to alter and amend such order, by striking out such condition, which the Court may do, unless it shall appear that there is any special reason why in the case in question such a condition is necessary or expedient.—(Sect. 2).

The principle of this bill might be usefully extended to other cases. Many other instances might be found, in which the care of the Court loads suitors with great expenses without conferring upon them corresponding benefits. We may call attention particularly to the evils in which the interposition of the Court conveyancers has been rendered necessary, either by act of Parliament, or the orders by the Court of Chancery.

The result of business being referred to them is, that frequently delays are occasioned and expenses incurred, which might have been altogether avoided, if the monopoly created in their favour were abolished.

We hope Lord Cranworth will direct his attention to this growing evil.

THE Twenty-fifth Annual Report of the Deputy Keeper of the Public Records for the year 1863 has lately been printed, and presented to both Houses of Parliament. It contains much information—some of a very interesting character. As to Fees (1); Literary inquiries (2); Removal of Records to the Record Repository (3); the Fac-simile of Domesday Book, by process of photozincography (4); the Examination of Government Documents (5); Calendars (6); the Chronicles and Memorials of Great Britain and Ireland during the Middle Ages (7); the Report upon the Carte and Carew Papers (8); the New Block of the Record Repository (9); Records not yet received into the Public Record Office (10); Transfers and Removals—Transfers into the Public Record Office (11); Arrangements, repairs, binding, and similar operations (12); Inventories (13); Calendars and Catalogues (14); Indexes (15).

In the Appendix to the Report are contained—No. 1, Exchequer Records; Calendar of Crown Leases, 33 to 38 Hen. 8; No. 2, Welch Records; Calendar of Bills, Answers, Depositions, and other Proceedings in Equity in the Exchequer of Chester, for the Counties of Chester and Flint, during the reigns of Hen. 8, Edw. 6,

and Philip & Mary: No. 3, Welch Records; Index to Inquisitions post mortem; Inquisitions ad quod damnum; Inquisitions as to Lunatics, Idiots, and Right of Way; Proofs of Age; Assignments of Dower; Extents; Writs of Livery, &c. for the Counties of Chester and Flint: No. 4, A Chronological List of Lords High Treasurers and Chief Commissioners of the Treasury, from the Accession of King Henry 7 to the present time: No. 5, Additions in the Year 1863 to the List of Calendars, Indexes, &c. of Records in the Public Record Office, annexed to the Twenty-fourth Report of the Deputy Keeper of the Public Records, with Corrections in such List.

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We scarcely know whether or not to regret that Mr. Scholefield has been persuaded to compromise the great cause of credit without debit, by proceeding with his Partnership-law Amendment Bill after the insertion of Mr. T. Baring's amendment, requiring every partnership, trading with limited liability as to any of its members, to notify the fact, by using the cognomen of "Registered" in addition to its other name or names. A similar condition was recommended by Mr. Baron Bramwell, but it did not find favour with the commercial men who speak through Mr. Scholefield. They felt it—Mr. Arthur Ryland, one of the advocates of the measure, says—"to be an *awkward requirement*." But, with the spread of enlightened commercial notions, even such a customer as a registered limited partnership would soon cease to be regarded as awkward.

The main object of Mr. Scholefield's bill will be gathered from the following extracts and abstracts:—

S. 4. "Any person who, subject to the provisions of this act, shall lend, or contract to lend, money to any general partner or partners [i. e. a partner with unlimited liability], upon any contract under which he shall share *profits*, or *profits and losses*, shall thereupon become and be a limited partner with such general purchaser or purchasers: provided always, that any such contract, in respect of which the provisions of this act shall not be complied with, shall constitute the person lending the money a general partner with the person borrowing the same."

S. 9. To constitute a limited partnership, the partners must register their names and residences, distinguishing each limited partner, the nature of the business, the place where it is carried on, the name of the firm, and the amounts lent or to be lent, and the time or times when lent or to be lent, and when to be repaid; but not the shares in which profits are to be divided.

S. 5. "A limited partner shall not be liable to creditors of the partnership, except to the extent and in manner hereinafter mentioned."

S. 8. A limited partner shall be liable to contribute to payment of the partnership debts only under a winding-up suit, and then not in respect of any debts contracted after he ceased to be a limited partner, nor beyond the amount (if any) unpaid by him of the loan which he contracted to make to the general partner.

It was the adoption of Mr. Buchanan's amendment, striking out the words "or contract to lend" from clause 4, that broke the back of Mr. Scholefield's patience; and no wonder, for it necessitates the omission of the phantasmagoric 8th section, in which alone, after all the lights are turned down, a creditor quite in the dark may fancy he sees the shadow of a limited liability.

S. 12. The loan must not be repaid, wholly or in part, nor further secured, before the appointed time.

S. 13. A limited partner becomes a general partner if he violate any of the foregoing provisions, or, as principal or attorney, do any other act (except lending money as aforesaid, and ascertaining profits and losses) which before the act would have made him liable as a partner; if he acquiesce in the use by the firm of any other than the registered name; or if his full name is included in the registered name.

S. 14. A limited partnership is dissolved (as to any limited partner) when the appointed time for repayment of the loan arrives, whether it is repaid or not, and he may then take back his money without liability to contribute to the debts, although the firm be then insolvent, if it is not actually in course of being wound up.

S. 18. A clerk, manager, or servant in any business, may contract to receive a share of profits in lieu of, or in addition to, salary, without becoming liable as a partner, and the contract is *not* required to be registered.

The consideration in committee of the clauses subsequent to clause 4, is to be proceeded with after the Whitsuntide recess.

The following operation under the bill, as proposed by Mr. Scholefield, may be taken as a sample of the many which would, no doubt, be invented, all equally conducive to sound commercial activity and morality:—

A., B., and C. conduct a business, under the firm "A., "C.," or "C. & Co.," on the following terms (which they confide to the attentive and exclusive ears of the registrar of joint-stock companies, and such of his gossips as may drop in at his office in Serjeants'-inn, London, or send him a letter of inquiry, with a "proper" fee):—A. is "manager," and conducts the business, entitled to receive a fixed yearly salary, in respect of any arrears of which he may compete with any of the creditors of the firm, and also to receive nine-twentieths of the profits, his right to which does not make him even a limited partner. B. supplies the capital, for which he claims one-half of the profits; and C. takes down the shutters, with the nominal right to the remaining twentieth share, which he is glad to commute for 20s. a week, so long as that modest salary is duly paid. Mr. Baring's amendment would introduce the variation that the firm must trade under the style of "C. (or C. & Co.), registered"—a not very important difference, when we consider that the object of the bill is to enable orphans and widows, and other helpless mortals, to dip for honey out of the hive of industry, without liability to stings; so that the addition of "registered" can only suggest to the cautious but sympathetic creditor, or possible creditor, the notion that the ostensible partners combine philanthropy with acuteness; and imagination may shape as it will figures denoting *their* resources, because it is the amount of the limited partner's capital alone that is registered.

It will easily be perceived how great a step or stride this amendment of the law of partnership would be towards the simplification of mercantile accounts, and the use of a true and consistent method of single entry, in lieu of the old and cumbrous Italian system, by the simple expedient of abolishing one side of the account as practically useless.

The bill is in many respects very different from that of the last session, and on the whole considerably more advanced, or (shall we say?) red. But the remark we made in reviewing the former bill, as to the superfluity of registration, is equally applicable to the one before us, even with Mr. Baring's amendment.

"A. desires to share in the profits of a business—say to the extent of nine-tenths, or ninety-nine hun-

creditors—without being liable to the creditors at all; or, which is the same thing, beyond the sum of 10%. He may do it, the other parties concurring,

"1. By registering the names and addresses of himself and the other persons concerned, the nature of the business, the firm, and the time of lending and the time for repayment of the 10%. He need not register the share of profits to be taken by him.

"2. He may agree to be manager, director, clerk, or auditor of, or agent for the district of Whetstone Park for, the person or persons in whose name the business is carried on, receiving a sum in proportion to the profits (which proportion may be the proportion of 99-100ths, or even that of equality—absorbing the whole); and in this case no registration is necessary. Nor is it necessary that he should perform the duties of the office he undertakes to any greater extent than may suit his convenience, or otherwise than by deputy.

"The conditions, therefore, annexed to the provisions of a lending partner, are an empty form." (9 Jur., N. S., part 2, p. 105).

There is one grave omission in the bill—which we trust Mr. Scholefield will supply before it leaves the committee—we mean the omission of any indemnity to the limited partner, or the profit sharing manager, against claims by creditors in respect of dividends out of the capital or the creditors' fund, upon a mistaken estimate of profits. But even in its present imperfect and mutilated condition, the bill is well calculated to provide opportunity for some very stupendous mercantile effects.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—Permit me to call the attention of your readers to the construction of the 200th section and model deed of the Bankrupt Act, 1861, so far as it affects the title to the copyhold estates of the debtor, and the mode of conveying such estates to a purchaser.

The 200th section provides, that when the assent of a certain majority of the creditors cannot be obtained, the debtor may execute a deed in the form given in the schedule, which deed "shall vest all the estate and effects of the debtor in the trustees of such deed;" and, by the deed, the debtor is made to convey "all his estate and effects" to the trustees absolutely. If there were nothing more, we should say the copyholds became vested in the trustees upon the execution of the deed, without any admittance, and may be surrendered by them to the purchaser in the ordinary manner. But the deed declares that the estate is to be applied and administered for the benefit of the creditors, in like manner as if the debtor had been at the date thereof duly adjudged bankrupt.

Now, in the case of a regular adjudication, the copyholds do not vest in the creditors' assignees, or only sub modo. The 117th section declares, that on the appointment of the creditors' assignee, "all the estate, both real and personal, of the bankrupt, shall be divested out of the official assignee, and vested in the creditors' assignee;" but the bankrupt's copyholds do not vest in the official assignee, for they are expressly excepted by the 142nd section of the act of 1849 (which is not repealed); and the 114th section of the act of 1861 empowers the Court to dispose of the copyholds, and by an order vest them in the purchaser. It is clear, then, that under the 117th section, assignees appointed by the Court do not take such an estate in the copyholds as will enable them to sell and surrender to a purchaser; and it was so held in *Re Haines* (6 Law T., N. S., 109). Moreover, the vesting the copyholds in the assignees has always been avoided.

If, then, the words "all the estate and effects" in the 117th section, are to be taken with some limitation, why not the same words in the 200th section and in the deed?

The 192nd section provides for deeds of trust when the required majority of the creditors assent; and the 197th section enacts, that the debtor, creditors, and trustees shall, in all matters relating to the debtor's estate, be subject to the jurisdiction of the Court of Bankruptcy, and shall have the benefit of, and be liable to, all the provisions of the act, in the same or the like manner as if the debtor had been adjudged bankrupt, and the creditors had proved, and the trustees had been appointed creditors' assignees under such bankruptcy; and the trustees and creditors shall, as between themselves and the debtor, and against third persons, have the same powers, rights, and remedies with respect to the debtor, and his estate and effects, as are possessed, or may be used or exercised, by assignees or creditors with respect to the bankrupt, or his estate and effects in bankruptcy; and except when the deed expressly provides otherwise, the Court is to determine all questions arising under the deed, according to the law and practice in bankruptcy, so far as they may be applicable, and shall have power to make and enforce all such orders as it would be authorised to do if the debtor had been adjudged bankrupt, and his estate is administered in bankruptcy.

Upon the construction of these sections, the Lord Chancellor observes (*Ex parte Morgan, in re Woodhouse*, 9 Jur., N. S., part 1, p. 559), "As soon as a deed is entitled to the benefit of the 192nd section" (that is, has been duly executed, registered, &c.), "it was the object of the Legislature, by the 197th section, to give to all parties under that deed a power of resorting to the Court of Bankruptcy whenever it should be necessary so to do;" and the 197th section causes "the state of things under a trust-deed, to be precisely the same as if there had been a bankruptcy instead of a deed of composition." Again: in *Ex parte Spyer, in re Joseph* (9 Jur., N. S., part 1, p. 949), "The whole effect of the 197th section, if it be properly attended to, construed, and appreciated, is to give to the deed, the moment it attains the character of a duly registered deed, a comprehensive effect upon all the estate and effects of the debtor, and the particular operation of making the positive and relative rights of the trustees and creditors claiming under it, the same as the rights of assignees and creditors under a fiat. This is still further exemplified by the 200th section, for where it is not competent to have a deed that shall answer entirely the requisites of the 192nd section, the model deed, which is given by the schedule, conveys all the estate and effects of the debtor in like manner as if he had become a bankrupt."

It would, therefore, appear, that, in his Lordship's opinion, the trustees, under the 200th section and model deed, take the same estate, neither more nor less, as assignees under an adjudication; and, as a consequence, that the estate is to be administered, that is, not only is the produce of the estate to be applied, but the estate disposed of, in the same manner; and that the copyholds are to be sold and vested in the purchaser by the Court under the 114th section, as in the case of a regular bankruptcy.

I have been induced to trouble you with these remarks, in consequence of having lately met with the case of a deed under the 200th section, where the trustees had been admitted to the copyholds, and it was insisted that they could alone make a title to a purchaser by surrender: the purchaser objected, and required an order of the Court; and the commissioner (Holroyd) declined to make any order, considering it unnecessary.

But to ascertain what is to be done under the model deed, and to give it effect, resort must be had to the provisions of the act in the case of an adjudication. How are new trustees to be appointed in case of death, &c.? In the same manner as if they had been assignees. What are the duties of the trustees? The same as the duties of assignees. And if the duties be the same, must not the powers be the same?

In short, does not the deed, after it has been allowed by the Court, and the other conditions of the act are fulfilled, place the debtor, creditors, and trustees, from the time of its execution, in the same position in every respect as if the debtor had been adjudged bankrupt, and the trustees chosen and appointed assignees? If not, by what rules are the proceedings under it to be governed?

Lincoln's Inn.

S. S. W.

THE LORD CHANCELLOR'S EXCUSES.

TO THE EDITOR OF "THE JURIST."

SIR,—While the enfranchisement of copyholds was voluntary, the act was seldom brought into operation, this because the expense was great, and the grievance very little felt; but when it became compulsory, the richer party was enabled to compel the poorer to enfranchise. I will also add, that manors are now frequently purchased on speculation that profits may be made from the compulsory enfranchisement. I have met with several cases of this sort in my own practice. This will account for the increase referred to by the Lord Chancellor, but does not in the slightest degree affect the question of sales under the Land Transfer Act.

Yours faithfully,

F. I. J.

Lincoln's-inn, May 3, 1864.

OFFICE OF LAND REGISTRY.—LAND CERTIFICATE.

The following is a copy of land certificate presented pursuant to an order of the House of Lords, dated the 21st April, 1864:—

"The Register of Estates with an Indefeasible Title.

Reference No. 40, vol. 1, p. 80.—Record of Title. No. 40.

Date of Entry.	Description.
February 20, 1864.	All those hereditaments called or known as Whiteacres, in the parish of A., in the county of B., containing by admeasurement 90A. 1R. 30P., or thereabout, and delineated on the map, No. 40, deposited in the office of Land Registry, as part of the description of the same hereditaments, and thereon edged with red. Together with the mines and minerals under the same.

The Record of Title to Lands on the Register.

Reference No. 40, vol. 1, p. 50.—Register of Estates.
No. 40, vol. 1, p. 40.—Register of Mortgages and Incumbrances.

Date of Entry.	Estates, Powers, Interests, &c.
February 20, 1864.	Richard Roe, of Cheapside, in the city of London, Esq., is entitled for an estate or inheritance of fee-simple in possession. The said Richard Roe has by deed declared that his widow, if any, should not be entitled to dower.

The Register of Mortgages and Incumbrances.

Reference No. 40, vol. 1, p. 50.—Register of Estates.
No. 40, vol. 1, p. 80.—Record of Title.

Date of Entry.	Charges and Incumbrances.
February 20, 1864.	By deed, dated the 14th March, 1863, the hereditaments were granted to John Doe, of Margate, in the county of Kent, Esq., in fee to secure the sum of 3000 <i>l.</i> and interest.

A copy of the above-mentioned map is attached hereto.

It is hereby certified, that the above-mentioned hereditaments are registered with an indefeasible title.

Delivered to the above-named Richard Roe, at his request, this 7th day of March, 1864.

(L. S.)"

[Signature of the Registrar.]

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

EASTER TERM, 1864.

INTERMEDIATE EXAMINATION.

THE Examiners reported that the following gentlemen, whose names are arranged in alphabetical order, have passed the intermediate examination with distinction:—

Robert Brown, the younger, aged nineteen, articled to Mr. Robert Brown, of Barton-upon-Humber.

Henry Jennings, aged twenty-five, articled to Mr. Thomas Wrake Ratcliff, of London.

The number of candidates examined in this term was 155; of these, 140 were passed, and 15 postponed.

By order of the Council,
E. W. WILLIAMSON, Secretary.

FINAL EXAMINATION.

At the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

1. William Gregson, the younger, aged twenty-one, who served his clerkship to Mr. William Gregson, of Rochford, and Messrs. Austen & De Gex, of London.

2. John Penn Milton, aged twenty-three, who served his clerkship to Mr. Christopher Childs, of Liskeard, and Mr. Robert Walker Childs, of London.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—

To Mr. Gregson, the prize of the Honourable Society of Clifford's Inn.

To Mr. Milton, a prize of the Incorporated Law Society.

The Examiners have also certified that the following candidates, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

William Goode Davies, aged nineteen, who served his clerkship to Messrs. Fenwick, Fenwick, & Falconar, of Newcastle-upon-Tyne, and Messrs. Pattison & Wigg, of London.

Frederick Elkins, aged twenty-one, who served his clerkship to Messrs. Hockley & Baker, of Guildford, Mr. William Blackman Young, of Hastings, and Mr. Robert Shuttleworth Gregson, of London.

Charles John Follett, B.C.L., aged twenty-five, who served his clerkship to Mr. Winslow Jones, of Exeter.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the under-mentioned candidate, that his answers to the questions at the examination were highly satisfactory, and would have entitled him to a certificate of merit if he had been under the age of twenty-six:—

George Buttler Kennett, aged thirty-one, who served his clerkship to Mr. William Holt, of Great Yarmouth.

The number of candidates examined in this term was 89; of these 73 were passed, and 16 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,
London, May 5, 1864.

Court Papers.

EQUITY SITTINGS, TRINITY TERM, 1864.

Before the LORD CHANCELLOR.

At Lincoln's Inn.

Monday....	May 23	Appeal Motions and Appeals.
Tuesday	24	No Sitting.—Her Majesty's Birthday kept.
Wednesday	25	Petitions and Appeals in Bankruptcy and Appeals.
Thursday	26	Appeals.
Friday	27	Appeals in Bankruptcy and Appeals.
Saturday	28	Appeals.
Monday.....	30	Appeals.
Tuesday.....	31	Appeals in Bankruptcy and Appeals.
Wednesday..	June 1	Appeal Motions and Appeals.
Thursday	2	Appeals.
Friday	3	Appeals in Bankruptcy and Appeals.
Saturday	4	Appeals.
Monday.....	6	Appeals in Bankruptcy and Appeals.
Tuesday.....	7	Appeal Motions and Appeals.
Wednesday	8	Appeals.
Thursday	9	Petitions and Appeals in Bankruptcy and Appeals.
Friday	10	Appeal Motions and Appeals.
Saturday	11	Appeals.
Monday.....	13	Appeal Motions and Appeals.

N. B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Monday....	May 23	Appeal Motions and Appeals.
Tuesday.....	24	No Sitting.—Her Majesty's Birthday kept.
Wednesday	25	Appeals.
Thursday	26	Petitions in Lunacy, Appeal Petitions, and Appeals.
Friday	27	Appeals.
Saturday	28	Appeals from the County Palatine of Lancaster and Appeals.
Monday.....	30	Appeals.
Tuesday.....	31	Appeal Motions and Appeals.
Wednesday..	June 1	Petitions in Lunacy, Appeal Petitions, and Appeals.
Thursday	2	Appeals.
Friday	3	Appeal Motions and Appeals.
Saturday	4	Petitions in Lunacy, Appeal Petitions, and Appeals.
Monday.....	6	Appeals.
Tuesday.....	7	Appeals.
Wednesday	8	Appeal Motions and Appeals.
Thursday	9	Petitions in Lunacy, Appeal Petitions, and Appeals.
Friday	10	Appeals.
Saturday	11	Appeal Motions and Appeals.
Monday.....	13	Appeal Motions and Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Chancery-lane.

Monday....	May 23	Motions and General Paper.
Tuesday.....	24	No Sitting.—Her Majesty's Birthday kept.
Wednesday	25	General Paper.
Thursday	26	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Friday	27	General Paper.
Saturday	28	General Paper.
Monday.....	30	Motions and General Paper.
Tuesday.....	31	General Paper.
Wednesday..	June 1	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Thursday	2	General Paper.
Friday	3	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Saturday	4	Motions and General Paper.
Monday.....	6	General Paper.
Tuesday	7	General Paper.
Wednesday	8	Motions and General Paper.
Thursday	9	General Paper.
Friday	10	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Saturday	11	Motions and General Paper.
Monday.....	13	Motions and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Lincoln's Inn.

Monday....	May 23	Motions, Adjourned Summonses, and General Paper.
Tuesday.....	24	No Sitting.—Her Majesty's Birthday kept.
Wednesday	25	General Paper.
Thursday	26	Petitions, Adjourned Summonses, and General Paper.
Friday	27	Short Causes, Adjourned Summonses, and General Paper.
Saturday	28	General Paper.
Monday.....	30	General Paper.
Tuesday.....	31	Motions, Adjourned Summonses, and General Paper.
Wednesday..	June 1	Petitions, Adjourned Summonses, and General Paper.
Thursday	2	Short Causes, Adjourned Summonses, and General Paper.
Friday	3	General Paper.
Saturday	4	Motions, Adjourned Summonses, and General Paper.
Monday.....	6	Petitions, Adjourned Summonses, and General Paper.
Tuesday.....	7	Short Causes, Adjourned Summonses, and General Paper.
Wednesday	8	General Paper.
Thursday	9	Motions, Adjourned Summonses, and General Paper.
Friday	10	Petitions, Adjourned Summonses, and General Paper.
Saturday	11	Short Causes, Adjourned Summonses, and General Paper.
Monday.....	13	Motions and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir JOHN STUART.

At Lincoln's Inn.

Monday....	May 23	Motions and Causes.
Tuesday.....	24	No Sitting.—Her Majesty's Birthday kept.
Wednesday	25	Causes.
Thursday	26	Petitions and Causes.
Friday	27	Short Causes and Causes.
Saturday	28	

Monday.....	30	} Causes.
Tuesday.....	31	
Wednesday... June 1		
Thursday.....	2	Motions and Causes.
Friday.....	3	Petitions and Causes.
Saturday.....	4	Short Causes and Causes.
Monday.....	6	} Causes.
Tuesday.....	7	
Wednesday....	8	
Thursday.....	9	Motions and Causes.
Friday.....	10	Petitions and Causes.
Saturday.....	11	Short Causes and Causes.
Monday.....	13	Motions.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

Before the Vice-Chancellor Sir W. P. Woon.

At Lincoln's Inn.

Monday	May 23	Motions and General Paper.
Tuesday	24	<i>No Sitting.—Her Majesty's Birth- day kept.</i>
Wednesday	25	} General Paper.
Thursday	26	
Friday	27	
Saturday	28	} Petitions, Short Causes, and General Paper.
Monday	30	
Tuesday	31	} General Paper.
Wednesday	June 1	
Thursday	2	Motions and General Paper.
Friday	3	General Paper.
Saturday	4	} Petitions, Short Causes, and General Paper.
Monday	6	
Tuesday	7	} General Paper.
Wednesday	8	
Thursday	9	Motions and General Paper.
Friday	10	General Paper.
Saturday	11	} Petitions, Short Causes, and General Paper.
Monday	13	
		Motions and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

Imperial Parliament.

HOUSE OF LORDS.—Friday, May 6.

The Lord Chancellor rose to call attention to the state of the law of debtor and creditor, as affecting the poorer classes, and to present a bill for the limitation of actions and processes for small debts, and to amend the acts relating to the county courts, and to confer on such courts a limited jurisdiction in equity. By a return which he moved for some time ago he found, that in the two years ending on the 31st December, 1863, no less than 17,979 persons were committed to prison for debts amounting to 309,777*l.*, and actually spent 257,251 days in prison. Now, out of that large number of prisoners who had incurred that great amount of confinement, he found that for one cause alone, viz. on the ground of not having satisfied the judgment, and costs, by persons who had not the ability to do so, no less than 17,850 persons were committed to prison, and the number of days which they spent in prison was 253,860. Comparing that with the figures he had previously quoted, their Lordships would observe, that this was a great and terrible source of injustice; for he found that the liberty of many of these men was taken away for sums of money so small as 1*s.* 6*d.*, 3*s.* 1*d.*, 1*s.* 10*d.*, and 2*s.* 9*d.*, and one person was actually committed to prison for several days for 9*d.*; and the sum total of the debts due on all the judgments at the time of the committals amounted only to 63,438*l.* Of the 17,979 persons, which, for the pur-

pose of round numbers, he would call 18,000, the greater portion belonged to the operative classes, artisans, and agricultural labourers; but the artisans' wages were rather more than the agricultural labourers'. Could any system be more founded in error than this—that where, as the artisan or labourer had no wealth, except his ability to labour, that he should be subjected to the operation of a law which shut him up in prison, and deprived him of the power of exerting that labour—that condemned him to idleness—that exposed him to the contamination of a prison—and, after a certain period of time, sent him forth a degraded and depraved person, with the probability of his being unable to again obtain work without considerable difficulty? Besides that, he begged their Lordships to consider the evils that fell upon society by the operation of this law. To this loss of productive labour must be added, the loss which society had to bear in consequence by the increased charge on the county rates for the maintenance of the prisoners—by the increase in the amount of poor rates from those who were dependent on the productive head of the family being thrown in many cases upon the parish, and by the aggravation of the debtor's burthen by the additional costs which were added to the debt, which thereby removed to a greater distance of time the possibility of his being relieved from his debt. He wished to point out the difference between the law according to the county court system and that regarding the rest of the community. When the first great step was taken against imprisonment for debt, that imprisonment was divided into two classes, namely, the debtor and the criminal classes. By the change which had taken place in the law, no debtor could remain in prison for more than fourteen days. He had no reason to be discontented with that part of the working of the act. On the contrary, he referred to it with great satisfaction, seeing that the Queen's Prison, which had once been the abode of vice, idleness, and profligate dissipation, was now converted into an hospital. Now, he asked their Lordships whether a creditor should have the right to throw a poor debtor into prison when it was evident that the unfortunate man had nothing whatever but the fruits of his own industry to depend upon for his living. He believed that a contrary system was calculated to produce habits of prudence on the part of the poor. And those were the objects to which legislation should be directed. He would now explain the means by which he proposed to remedy the existing evil. He professed, in the first place, to abrogate the existing law which gave power to the judge to commit the debtor, if he were satisfied that he possessed the ability to pay. He would introduce a clause into his bill which would require the judge, in estimating the ability of the debtor, to take into consideration the whole of his circumstances. The result of his measure, if passed, would be this—that, for debts contracted by fraud, the debtor would be liable to criminal punishment; but a mere debtor would be liable to imprisonment once only for the same debt; but that imprisonment should not be a mere farce, but a reality. If the debtor had been committed for any one of these criminal acts specified in the bill, he proposed that he should be imprisoned for a period not exceeding two calendar months, but that he should not be subject to any further imprisonment. He provided, therefore, by the bill, that whenever a debtor should be brought up, and the judge should have reason to believe either that he had no means, or insufficient means, either present or future, to provide, within a reasonable time, for the discharge of the debt, the judge should bring before him all the creditors of that debtor, and then ascertain what amount of load might with propriety be placed on the shoulders of the debtor, and that that amount should be paid into court, and divided among the creditors. The administration of the law should be so guided, that, in the case of the poor insolvent debtor, something corresponding to the course of the new bankrupt law should be extended to him. He proposed also that no action should lie, no judgment be given, for any score for beer or ale consumed on the premises of any ale or beer house. With respect to small debts under 20*l.*, there was no reason why there should not be enacted with respect to them some shorter period, both with regard to suing, and also with regard to the enforcement of judgment. He proposed, therefore, that the debt should be sued for within one year of the last item being contracted, and within one year of the last judgment on the judgment debt having been made. He had gone through the first

part of the bill. He would now mention the provisions of the second portion. Their Lordships were aware that when these courts were established their jurisdiction was limited to matters of law, as contradistinguished from matters of equity. Suppose a poor man died and left a small property of 80*l.*, 90*l.*, or 100*l.*, he might leave a widow and four or five children. There was no resort to the county court for them to obtain distribution, as that tribunal was at present constituted. They could not get relief without going to the Court of Chancery—a court utterly inadequate in such trifling cases. Take again the case of a partnership, in which the value of the goods might not exceed 300*l.* or 400*l.*; in case of disputes among the partners no redress could be had except by resorting to the same court. In all these and similar cases he proposed to clothe the county court judges with summary equitable jurisdiction, to be administered promptly, economically, without much form and without much delay; and he hoped to hear that this extension of their power would tend greatly to the relief of the poorer classes. There was another subject to which he would direct their Lordships' attention. When the county court system was established, the power of suing for small debts in the superior courts was not taken away. He wished, therefore, to check this practice, and he thought that the provisions of the bill would be found sufficient to prevent the infliction of such injustice. His desire was to make the law as equitable for the labouring and operative classes as it was for the poorer classes of the community; and with the earnest hope that their Lordships would think this subject worthy of their attention, he trusted that they would, with some modifications perhaps, approve the clauses of this bill, and thereby make such an addition to our legislation as would tend very greatly to the benefit of the labouring classes of the country.

Lord Cranworth having made a few observations,

The Lord Chancellor said he had neglected to state that there was a provision that the householder's goods should not be taken away, and that the labourer should not be deprived of the tools by which he obtained his livelihood.

The bill was read a first time.

Monday, May 9.

On the motion of the Lord Chancellor, the Commons Amendments to the Court of Chancery (Dispatch of Business) Bill were considered, and agreed to.

The Promissory Notes and Bills of Exchange Bill was read a second time.

The Customs and Inland Revenue Bill was read a second time.

Tuesday, May 10.

The Earl of Ellenborough moved the second reading of the Sentences of Death Bill. But after some debate he withdrew it, at the suggestion of Earl Granville, in consequence of the recent appointment of a royal commission to consider the subject of capital punishment.

The Common-law Procedure (Ireland) Act Amendment Bill was read a second time.

The Promissory Notes and Bills of Exchange (Ireland) Bill passed through committee.

The Customs and Inland Revenue Bill also passed through committee.

The Duke of Buccleugh brought in a bill for removing the disabilities of the Scotch episcopal clergy in England.

HOUSE OF COMMONS.—Thursday, May 5.

Mr. A. Mills asked the Attorney-General when the Courts of Justice (Money) Bill would be introduced by the Government.

The Attorney-General intended to introduce it next week.

The Attorney-General, in reply to Mr. Hadfield, said he did not think he should be able to move the second reading of the Church Building and New Parishes Acts Assessment Bill to-morrow, but hoped to be able to make a statement on the subject before Whitsuntide.

In reply to Mr. Liddell, Sir G. Grey said the Government intended to introduce a bill on the subject of highways, and if it should be read a second time, to refer it to a select committee.

The Under-Secretaries Indemnity Bill was read a third time.

The Local Government Supplemental Bill passed through committee.

The Union Assessment Committee Act Amendment Bill was read a second time.

The Joint-stock Companies (Foreign Companies) Bill was read a second time.

Sir G. Grey obtained leave to bring in a bill for amending the law relating to gaols, and for the discontinuance of certain gaols.

The Solicitor-General obtained leave to bring in a bill for the amendment of the law relating to the mitigation of penalties.

Friday, May 6.

The Lord Advocate brought in the Administration of Justice (Scotland) Bill, which was read a first time.

Sir G. Grey, in answer to Mr. Hadfield, said the second reading of the Church Building and New Parishes Acts Amendment Bill would be postponed until the 29th of this month.

Mr. D. Seymour asked the Secretary of State for the Home Department whether he was aware that the practice still prevailed of transporting convicts and vagrants from the Channel Islands to Southampton and other southern seaports. He pointed out that about 1000 individuals had been transported from Jersey and Guernsey to Southampton; that of these many were burglars; those transported for life were sent to New South Wales, and those transported for a period of five or six years were sent to Southampton, Plymouth, and Weymouth; nor was a trial always had, but the vagrant was allowed to go to England without a prosecution. The evil the petitioners complained of had been existing for many years.

Sir G. Grey said, that no native of Guernsey had been transported from the island since 1840, and he, therefore, thought the hon. and learned gentleman had been misinformed. If any different information was received from Jersey he would communicate with the hon. and learned gentleman, who had, perhaps, better move for the correspondence on the subject.

The Under-Secretaries Indemnity Bill went through committee.

The Local Government Supplemental Bill was read a third time, and passed.

The Chief Rents (Ireland) Bill passed through committee.

Monday, May 9.

The Attorney-General for Ireland, in answer to a question from Mr. Hassard, said it was his intention to introduce a measure to amend the laws relating to "Charitable donations and bequests" in Ireland.

Lord Proby, Comptroller of the Queen's Household, appeared at the bar of the House, and stated that her Majesty had given directions, that a royal commission should issue to inquire into the operation of the law under which the punishment of death is inflicted, and to report whether it is desirable to make any alteration therein.

The Under-Secretaries Indemnity Bill was read a third time, and passed.

Some amendments in the Court of Justiciary (Scotland) Bill were considered, and agreed to.

The Summary Procedure (Scotland) Bill was recommitted, for the purpose of making certain amendments, which were agreed to.

The Admiralty Lands and Works Bill passed through committee.

The Joint-stock Companies (Foreign Countries) Bill passed through committee.

The House went into committee on the Partnership-law Amendment Bill.

On clause 3,

Mr. T. Baring moved as an amendment, that the word "registered" should be attached to every company which adopted the provisions of this bill.

After some debate, the committee then divided. The numbers were—

For the amendment	..	..	..	58
Against	..	..	..	43

Majority for the amendment .. 15

On clause 4,

Mr. Buchanan moved the omission of the words "or con-

tract to lend," which provided, that a person might contract to lend money, without paying it.

Mr. Scholefield said, the clause was only carrying out the principle of a company whose shares were not all called up.

Mr. Baring supported the amendment. Suppose a person contracting to lend money should fail, what claim would the limited partnership have upon that estate?

The committee again divided—

For the amendment	46
Against it	39

Majority	7
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Mr. Scholefield said, after the decisions of the committee, he thought it would be useless to proceed further with the bill; and therefore he moved, that the bill be withdrawn.

After observations from several members,

The Chancellor of the Exchequer suggested, that if his hon. friend would take a little time to consider, and ascertain the feelings of the House, he believed that he might, if he persevered, pass his bill, although it might take some time.

Mr. Scholefield said he would adopt the suggestion, and, with the consent of the committee, move that the chairman report progress, and he would proceed with the bill after the recess.

Mr. W. E. Forster thought, that as the President of the Board of Trade had voted one way, and the Attorney-General the other, it would be better that his hon. friend should drop the bill, and that it should be thrown upon the Government to take it up on their own responsibility.

The Attorney-General said he was favourable to the principle of the bill, although he had voted against the hon. member on the last division. He hoped the hon. gentleman would reconsider his intention to withdraw the bill.

The Chairman then reported progress, and asked leave to sit again.

Tuesday, May 10.

Sir G. Bowyer moved for leave to bring in a bill to enable the benchers of the Inns of Court to appoint judicial committees in certain cases, and to give the necessary powers to such committees.

Mr. W. Ewart seconded the motion; and leave was given to bring in the bill.

Wednesday, May 11.

Mr. Baines moved the second reading of the Borough Franchise Bill; but, after a considerable debate, it was thrown out: by a majority of 56.

The second reading of the Poor-law Acts (Ireland) Bill was postponed to the 29th June.

Mr. Heygate moved the second reading of the County Bridges Bill; but the bill, after some debate, was withdrawn. The Court of Justiciary (Scotland) Bill was read a third time, and passed.

The Admiralty Lands and Works Bill passed through committee.

The Joint-stock Companies (Foreign Countries) Bill was read a third time, and passed.

WHITEHALL, May 7.—The Queen has been pleased to appoint the Right Hon. Henry Austin Bruce to be the Fourth Charity Commissioner for England and Wales.

COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.—The Lord Chancellor has appointed Edward Wright, of Leamington, Warwickshire, and Richard Wright, of Whiteheads-grove, Chelsea, Gentlemen, to be London Commissioners to administer oaths in the High Court of Chancery.

Dec. 30.—The Right Hon. Sir Alexander Edmund Cockburn, Bart., and Sir John Mellor, Knt., two of the Justices of her Majesty's Court of Queen's Bench at Westminster, have appointed Frederick Augustus Lewis, Gent., of No. 7, Trafalgar-place, in the county of Middlesex, to be a London Commissioner for administering oaths in Common Law in the said Court.

Feb. 27.—The Right Hon. Sir William Erle, Knt.,

and Sir James Shaw Willes, Knt., two of the Justices of her Majesty's Court of Common Pleas at Westminster, have appointed Frederick Augustus Lewis, Gent., of No. 7, Trafalgar-place East, Hackney-road, in the county of Middlesex, to be a London Commissioner for administering oaths in Common Law in the said Court.

April 2.—The Right Hon. Sir Frederick Pollock, Knt., and Sir Gillery Pigott, Knt., two of the Barons of her Majesty's Court of Exchequer, at Westminster, have appointed Frederick John Blake, Gent., of Southsea House, Threadneedle-street, to be a London Commissioner for administering oaths in Common Law in the said Court.

In consequence of the death of Mr. Justice Mills, of the Calcutta High Court, Mr. Macpherson has been appointed acting puisne judge. The question who is to succeed Sir Barnes Peacock as Chief Justice, has been referred to her Majesty's Secretary of State for India.

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At the ANNUAL MEETING of the PROPRIETORS, held on THURSDAY, the 4th February, 1864, at the LONDON TAVERN, Bishopsgate-street, the following Report for the Year ending the 31st December, 1863, was read by the Secretary.

WILLIAM NICOL, ESQ., M.P., IN THE CHAIR.

REPORT.

The Directors, in submitting to the Proprietors the Accounts of the Bank for the Half-year ending the 31st December, 1863, have much satisfaction in reporting that the Net Profit for the Six Months, after deducting all charges, amounts to 84,325*l.* 0*s.* 2*d.*, which, added to 14,343*l.* 3*s.* 4*d.* brought forward from the last Account, results in a total of 98,668*l.* 3*s.* 10*d.*

Out of this Sum the Directors recommend that the usual Dividend of 6*l.* per Cent., together with the Bonus of 6*l.* per Cent., be declared for the Half-year, making, with the Dividend paid in August last, 18*l.* per Cent. for the Year. They further propose to carry 10,000*l.* to the Reserve Fund, making that Fund 100,000*l.*, leaving 16,668*l.* 3*s.* 10*d.* to be carried forward to Profit and Loss new Account.

In consequence of the great increase of the Business of the Bank, the Directors consider it advisable further to increase the Capital of the Company, by the issue of 7500 New Shares, to be offered, *pro rata*, amongst the Proprietors, as they appeared in the Register on the 3rd instant, the date when the Transfer Books of the Company were closed; such Shares to be issued at the price of 40*l.* each, being a premium of 20*l.* per Share. Full particulars of the Issue will be transmitted by Circular to each Proprietor.

This operation will produce 300,000*l.*, out of which 150,000*l.* will be added to the Capital of the Company, and 150,000*l.* (being the Premium on the Shares), will be added to the Reserve Fund, raising the former to 750,000*l.* and the latter to 250,000*l.*—together One Million.

The Directors regret having to announce the decease of HENRY OVERTON, Esq., for many years one of the Auditors of the Bank. This creates a vacancy in the Auditorship, which it is in the power of the Meeting to fill up.

The Directors retiring by rotation are—

PHILIP PATTON BLYTH, Esq.,

EDWARD HUGGINS, Esq.,

and WILLIAM LEE, Esq., M.P.,

all of whom are eligible for re-election, and offer themselves accordingly.

The Dividend will be payable at the Head Office, or at any of the Branches, on and after Monday, the 15th instant.

BALANCE SHEET

Of the London and County Banking Company, 31st December, 1863.

Dr.		Cr.	
To Capital paid up.....	£600,000 0 0	By Cash on hand at Head Office and Branches.....	£1,238,139 1 3
Reserve Fund.....	90,000 0 0	Cash placed at Call and at Notice.....	1,066,002 7 2
Amount due by the Bank for Customers' Balances, &c.....	£8,245,722 9 4	Investments, viz—	
Liabilities on Acceptances and Indorsements by the Bank, Circular Notes, and Letters of Credit.....	1,088,916 1 9	Government and Guaranteed Stocks.....	839,158 16 9
	9,334,638 11 1	Other Stocks and Securities.....	110,936 17 9
Profit and Loss Balance brought from last Account.....	14,343 3 8	Discounted Bills, and Advances to Customers in Town and Country.....	6,784,844 14 6
Gross Profit for the Half-year, after making Provision for Bad and Doubtful Debts.....	227,329 9 7	Freehold Premises in Lombard-street and Nicholas-lane, Freehold and Leasehold Property at the Branches, with Fixtures and Fittings.....	110,630 18 7
	£10,266,221 4 4	Interest paid to Customers.....	49,787 7 2
		Salaries and all other Expenses at Head Office and Branches, including Income Tax on Profits and Salaries.....	66,721 1 2
			£10,266,221 4 4
Profit and Loss Account.			
To Interest paid to Customers.....	£49,787 7 2	By Balance brought forward from last Account.....	£14,343 3 8
Expenses as above.....	66,721 1 2	Gross Profit for the Half-year, after making provision for Bad and Doubtful Debts.....	227,329 9 7
Rebate on Bills not due, carried to New Account.....	26,406 1 1		
Reserve Fund.....	10,000 0 0		
Dividend of 6 <i>l.</i> per Cent. for the Half-year.....	36,000 0 0		
Bonus of 6 <i>l.</i> per Cent.....	36,000 0 0		
Balance carried forward.....	16,668 3 10		
	£241,582 13 3		£241,582 13 3

We, the undersigned, have examined the foregoing Balance Sheet, and have found the same to be correct.

London and County Bank, 28th January, 1864.

(Signed) JOHN WRIGHT, } Auditors.
 R. H. SWAINE, }

Printed by HENRY HANSARD, at his Printing Office, in Parker Street, in the Parish of St. Giles-in-the-Fields, in the County of Middlesex, and published by HENRY SWEET, of No. 3, CHANCERY LANE, and RICHARD STEVENS, of 26, BELL YARD, LINCOLN'S INN, at the Office, No. 39, BELL YARD, LINCOLN'S INN.—Saturday, May 14, 1864.

The Jurist

No. 489, NEW SERIES.—Vol. X.
No. 1428, OLD SERIES.—Vol. XXVIII.

MAY 21, 1864.

PRICE 1s.

LONDON AND COUNTY BANK.—NOTICE is hereby given, that a BRANCH of the London and County Bank was OPENED this day, at Nos. 324 and 325, HIGH HOLBORN, near to Middle-row, under the Management of Mr. L. R. Sykes.
By Order, W. McKEWAN, General Manager.
London and County Bank, May 2, 1864.

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T. B. SPRAGUE, *Actuary and Secretary.*

THE JURIST.

LONDON, MAY 21, 1864.

It is not long since we noticed the great benefits which had been conferred upon India, by the enactment, in the year 1860, of the Indian Penal Code, which was originally prepared by the Indian Law Commissioners, when the late Lord Macaulay was President of that body, and which was laid before the Governor-General of India in Council in the year 1837.

In the year 1861 a Royal Commission was issued to Sir John Romilly, M. R.; Sir William Erle, C. J.; Sir Edward Ryan, Knt.; Mr. Robert Lowe, late Vice-President of the Committee of Council on Education; Sir J. S. Willes, J.; and John Macpherson Macleod, Esq., as Commissioners, with the assistance of William Macpherson, Esq., as Secretary, and Neil Benjamin Edmonstone Baillie, Esq., as Assistant Secretary, "to prepare for India a body of substantive law, in preparing which the law of England should be used as a basis, but which, once enacted, should itself be the law of India on the subjects it embraced.

By a letter, dated the 14th December, 1861, from the Secretary of State for India, the commissioners were requested to report the result of their labours on *one branch of civil law* before entering on the consideration of another branch, as the plan of successive reports would greatly facilitate the necessary measures which would have to be taken in India for giving effect to their recommendations.

The commissioners finding that, by various classes of persons in India not professing the Hindoo or the Mahomedan religion, a want of substantive civil law was most complained of, and that a *law to regulate the devolution of property on death* was most urgently required by those classes, they, in the first instance, directed their attention to the preparation of a law of succession and inheritance, generally applicable to all classes other than the Hindoos and Mahomedans, both of which great portions of the population of India have laws of their own upon the subject.

The commissioners appear to have applied themselves to their task with great energy; but although they made their first report so far back as the 23rd June, 1863, it has only just been printed and presented to Parliament.

The commissioners have termed the subject of their report, "*Rules of Succession and Inheritance*;" but, upon examination, it has a much wider application, and comprehends not merely those rules, but also rules as to the making of wills and codicils, as to legacies of different kinds, the construction of wills, the appointment of executors, as to donations mortis causa, probate of wills, letters of administration; the duties of executors and administrators, such as the administration of assets, the assent to and payment of legacies, when annuities and legacies become payable, what interest is payable thereon, when they ought to be refunded, and as to the liabilities of executors and administrators.

Although the report is based upon the law of England, it in some material respects differs from it.

Thus, it is proposed by the general law of India, to make no distinction between the succession to movable and immovable property, the devolution of which is to be governed by one system of rules.

In one or two cases, provisions affecting rights as between living persons have been introduced.

It is proposed that a man shall not, through the mere operation of law, acquire by marriage any interest in his wife's property during her life, but that she shall continue to possess the same rights, with reference to it, as if she were unmarried, and shall have full power to dispose of her property by will.

It is proposed, in case of intestacy, to give a widow the same rights in respect of *all* the property of her husband, as a widow has in England in respect of her husband's personal property; providing at the same time, that when there is a widow, and no kindred of the intestate, the whole property shall belong to her, instead of one half going to her, and the other half to the Crown.

The husband, where he survives his wife, is to have such rights in respect of her property as the wife has in respect of his property where she is the survivor.

The rule of English law, by which, in cases of total intestacy, anything which a child may have received from his father in his lifetime, by way of advancement, is deducted from his share in his father's estate, is proposed to be omitted, as being likely to be productive of difficult investigations and litigation.

It is proposed to take the Wills Act (1 Vict. c. 26) as the basis of the law relative to the execution and revocation of wills, with some modifications in its provisions as to execution, which would be likely to cause frequent intestacy. But wills may be made by persons of either sex at the age of eighteen.

The English rules, relative to the satisfaction of debts by legacies, and of portions by legacies, and the ademption of legacies by portions, have been discarded.

Provisions are inserted for defining expressions used in wills to denote kindred and representation, and for giving the legacy absolutely to the first taker, where words are added which (in legal phrase) are words of limitation and not of purchase.

The power of creating successive interests in property by will, is restricted, by providing that interests so created shall not extend beyond the lifetime of persons living at the testator's death, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attain the age of eighteen, the thing bequeathed is to belong. There are provisions also, that a bequest to a person not born at the testator's death must comprise the whole of the interest of the testator in the thing bequeathed; and that where, at the time fixed for the payment of a legacy, the person for whom it was intended has not come into existence, the bequest shall have no effect.

There are also provisions, that directions to accumulate the income arising from any property shall be void, and also against death-bed bequests, to charitable uses, by persons having near relatives.

The commissioners have abstained from introducing into India the very refined distinctions which the Court of Chancery has, in questions relating to personal property, borrowed from the Ecclesiastical Courts.

They very wisely, in our opinion, do not propose to extend to India the rule which enables an executor to pay any creditor (whether himself or another person) in preference to another creditor of equal degree.

They also provide, that funeral and death-bed expenses, and charges of probate and administration, are to be first paid, then wages due to any labourer, artisan, or domestic servant employed by the deceased; and that in respect of no other debt shall a creditor be entitled to a preference, either by reason of its being secured by deed under seal, or any other account.

Although the operation of the proposed Code will be much limited by its not being applicable to persons professing the Hindoo or the Mahomedan religion, its object is, as the commissioners say, "ultimately to introduce one uniform system applicable to all classes, wherever this can be properly or safely accomplished."

In following the example set by the framers of the Indian Penal Code, the commissioners have made a copious use of illustrations. We give one extract, which shews how the Code is framed:—

"281. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

"Illustrations.

"(a). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it:—The sale is valid.

"(b). The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased:—The mortgage is valid.

"282. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any person interested in the property sold.

"283. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will.

"Illustrations.

"(a). One of several executors has power to release a debt due to the deceased.

"(b). One has power to surrender a lease.

"(c). One has power to sell the property of the deceased, movable or immovable.

"(d). One has power to assent to a legacy.

"(e). One has power to indorse a promissory note payable to the deceased.

"(f). The will appoints A., B., C., and D. to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

"284. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor."

This specimen of the proposed Code shews how the commissioners have performed their work. First, the rule of law is laid down, and then, when necessary, it is followed by illustrations.

The commissioners wish to have it understood, that

the correctness of the decision contained in any illustration is not to be questioned in the administration of the law. The illustrations are not merely examples of the law in operation, but are the law itself, shewing by examples what it is.

Difficulties will, of course, arise as to the construction of the rules, leading to differences of opinion among judges. Cases, also, will doubtless arise where the Code is silent; and the result would be, if nothing is done to prevent it, that the Code will be incumbered with a mass of comments and decisions.

In order to prevent this great evil, the commissioners, agreeing in this respect with the framers of the Penal Code of India, think that "the Civil Code ought, at intervals of only a few years, to be revised and so amended as to make it contain, as completely as possible, in the form of definitions of rules, or of illustrations, everything which may from time to time be deemed fit to be made a part of it, leaving nothing to rest as law on the authority of previous judicial decisions." Each successive edition, after such a revision, it is suggested, should be enacted as law, and would contain, sanctioned by the Legislature, all judge-made law of the preceding interval deemed worthy of being retained. On these occasions, too, the opportunity should be taken to amend the body of the law under revision in every practicable way; and especially to provide such new rules of law as might be required by the rise of new interests and new circumstances in the progress of society.

The commissioners also suggest, for the due administration of the law under the proposed Code, if adopted, that when cases of difficulty occur, no resort should be had to any other system of law for the purpose of authoritatively solving an ambiguity or supplying an omission, and that the judges must decide cases unprovided for by the Code in the manner they consider most consistent with the principles of justice, equity, and good conscience.

Although the proposed Code is, doubtless, susceptible of some improvements, we think that the commissioners deserve great praise for the energy and learning they have shewn in preparing in so short a time a Code upon such an important branch of the law as that which they have selected, and which is, as we have already observed, much more extensive than we might, from the title given to it by the commissioners, at first sight suppose. If they proceed with their work as they have commenced it, our vast Indian empire will at no distant period be possessed of a Code which will bear comparison with any yet framed, and promulgated; and if the advice of the commissioners is followed, the body of the Code will in future be from time to time so amended, as that its symmetry will not be injured by supplemental laws added to, but not incorporated within it—a fate which befel the Digest of Justinian, to which were appended, at no distant time after its promulgation, the Code, the Novella, and the Edicts of the same Emperor.

The commissioners appointed to prepare a body of substantive civil law for India, have set an example which might with advantage be followed by those

who may attempt to prepare a similar body of laws for England.

At a time when the subject of law reports and law reporters is exciting so much attention in the country, and there is manifested a strong inclination on the part of some persons, if possible, to suppress independent reports, and to have official reporters, it is well to see how the system of official reporting works in other countries.

In the United States, the reporters are officers of the court, and receive in that capacity, we believe, regular salaries. It has become the fashion to refer to them as models. Let us see how far the same opinion prevails in the United States.

The *Legal Intelligencer* of Philadelphia makes the following remarks upon the mode in which the reports of the Supreme Court of the United States have for many years been put together and published:—

"The reports of the Supreme Court of the United States have been for many years past—ever since the time, in fact, that Mr. Wheaton ceased to report them—eminently discreditable to our professional character abroad, and a vexatious burthen every way to those among us who were obliged to read them at home. They have been, in some cases, almost untelligible except to the counsel who argued, or to the judges who decided, them. The careless or stupid way wherein whole deeds, and wills, and documents of every kind have been thrust in bodily, when the case may turn upon two lines, or but two words of them; the whole way, in short, in which the cases are stated, and the arguments of counsel are not stated—unintelligible itself, and making unintelligible every other part of the proceeding—has long disgusted the Profession, and prevented any one from reading the Federal reports of cases in their last adjudication if they could possibly help it. We say little of the miserable shifts that have been sometimes resorted to for swelling the volumes; considerations, these last, prompted by motives quite beneath the attention or even the contempt of an honourable mind. But carelessness, stupidity, disorder in stating and reporting the body of the cases, is not all. The Profession, for forty years, has had to complain of acts of incompetency and error, by the operation of which the decisions of the Court—the Court of supreme authority throughout the land—are, in effect, falsified, the Bar misled, and the law abused. We charge, that in repeated instances, in the syllabuses of cases, the decisions of the Court have been grossly misrepresented, and that it is certified by the reporter to the Profession that the Court has decided that which the Court has not decided."

It will be seen from this extract, that some of the official reports of the United States are in worse odour even than our own authorised reports.

THE Naval Prize Acts Repeal Bill, which it is proposed should commence on the commencement of the Naval Prize Act, 1864, and the Naval Agency and Distribution Act, 1864, expressly repeals fifty-six acts

or parts of acts of Parliament, commencing with stat. 6 Ann. c. 13 and c. 65, relating wholly or mainly to naval prize of war, and matters connected therewith, or with the discipline or management of the navy, which have either ceased to be in force, or, on the commencement of the Naval Prize Act, 1864, and the Naval Agency and Distribution Act, 1864, will cease to be in force.

This measure shews, in one branch out of many, how our statute law admits of consolidation.

Reviews.

Levi's International Commercial Law. Second Edition.
[Stevens, Sons, & Haynes.]

"It cannot be doubted that uniformity in the laws by which commerce is regulated in different countries would be, if it could be obtained, of immense advantage to commerce generally. Nothing would tend more to give public opinion a proper direction than such a publication as yours, where the legislative enactments of different countries upon the same subject would be found in juxtaposition, and where the ready means thus afforded for comparing their relative merits would infallibly lead to a certain degree of assimilation, the advantage and convenience of which would be obvious; or should it not lead to this result, the publication would, at all events, afford to the mercantile world the means of knowing the points of difference in the various commercial codes on which it is most important for them to be correctly informed."

These words form part of a letter which was addressed to the author of the above work by the late Prince Consort, and appeared in the first edition. They express the soundest wisdom and good sense, and also truly define the principle on which Mr. Levi has framed his book. The object of the work, as Mr. Levi tells us in his Preface, is "to bring the fundamental principles of the law merchant, and the rules which have been superadded to them in different countries, into contact with each other, so that we may profit by each other's experience, and at the same time gather materials for the attainment of solid and permanent progress in mercantile legislation. The chief advantage of such a work is the ready access it affords to the existing laws of the principal countries in the world."

Any lawyer will understand, that if Mr. Levi has really carried out the design thus announced, he must have devoted an extraordinary amount of learning and labour and time upon the book, and that he must also have brought to bear great ability and soundness of judgment, if he has done his work well. Mr. Levi's reputation as an author and a jurist is so well established that there could be little doubt as to the character of the book whose merits we are now discussing, and we can sincerely recommend it as a clear, concise, and correct compendium of the commercial law of this country and her colonies, and of the various foreign countries mentioned in the title-page. In the first volume there are most useful chapters on partnership, and on the statutory law of joint-stock companies. That on partnership states the law of foreign countries as well as of Great Britain with respect to such associations, and explains the system prevailing in France of partnerships in commandite—bodies formed of several individuals, some of whom are responsible to the full extent of their property, others with a limited liability—a combination which Mr. Levi considers to be formed on sound principles, and which, we believe, there is a desire among some persons to establish in

this country; and this is an instance of the advantage of such a work as Mr. Levi's, which, putting, as it were, side by side, the law which regulates partnerships in this country with that which regulates them in others, enables us to contrast the two, to see the merits and demerits of each, and to improve our own where improvement is required. The same remark will apply to the other subjects treated of in the book, among which the subject of the bankrupt laws of Great Britain and other countries has evidently been handled by the learned author with great care and research.

It may be, that notwithstanding the facilities of intercourse between different countries, many years must elapse before anything like a common code of commercial law will be established, but it is clear that such books as these must have a tendency to promote an object so desirable; and on this account, as well as on account of the merits of the book itself, we trust it will be extensively read.

Mr. Levi does not profess to do more than explain what are the laws of different countries on the various branches of commercial law. He abstains from entering at any length upon the subject of the conflict of those laws. We hope at some future time to see such a work proceed from his pen. A clear and concise treatise on this branch of international law is, we venture to think, still a desideratum in legal literature.

The Ocean, the River, and the Shore. Part I.—Navigation. By J. W. WILCOCK, Q. C., and A. WILCOCK, M. A., Barrister-at-Law.

[Routledge, Warne, & Routledge.]

THIS is an original work, the learned authors of which, by their very Preface, invite criticism, for they state there that "their object is to shew *what is law*, rather than what has been enunciated and accepted as law." This is a tolerably bold sentence, if the meaning of it is, that the authors propound in the book their own views of law as the correct views, and set them up as superior to the decisions of the Courts.

There is much learning, much labour, and a considerable amount of earnestness expended on this book, but, in most parts of it, it is as unlike a law book as any we have ever read. No doubt, the authors state in their Preface, that it is intended "rather for the merchant, the mariner, the riparian proprietor, the fisherman, the jurist, the general reader, than for the lawyer." Now, we should say that there is too little law in it for the lawyer, and too much law for the other classes of individuals mentioned in the Preface. Indeed, there are parts which seem to be rather intended for the pulpit; for instance, paragraph 248, which runs thus:—

"The armies of the Chaldeans are marshalled round the merchant city. The prophets of Salem pour forth their denunciations against thee, and the vials of their wrath on the regions of the Nile. For thirteen years thy palaces have resounded with the clangour of arms, but thy navies guard thy island, and ride triumphant on the sea. The Lydian, and the Lycian, and the Persian, hang their shields on thy bastions, and array their thousands on thy walls. The squadrons of Togarmath are mounted in thy streets, and the Egyptian hosts are advancing."

Par. 249. "Vain are the denunciations of the prophet; the fury of his hatred is vain. The armies of Babylon are returning. The siege of the merchant city has failed."

We would refer also to chapter xiv on the subject of Recognition, as another specimen of the quaintness and peculiarities of the style. With the greatest re-

spect for its learned authors, we cannot but think that it would have been better to have propounded their views more concisely, and to have forborne from passages similar to those which we have cited. They are not suitable to the nature of the subjects discussed, and they are not likely to promote a desire to read the book in those who really wish to study those subjects. We think that there is much useful knowledge to be acquired from the perusal, but that that knowledge would have been presented in a more inviting shape if the matter had been condensed, and the style in some portions of the work less inflated.

Court Papers.

EQUITY CAUSE LISTS, TRINITY TERM, 1864.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

Knox v. Gye (W., Feb. 13)
River Fergus Navigation and
Embankment Co. v. Cahill
(W., Mar. 14)
Hill v. South Staffordshire
Railway Co. (S., April 11)
Smith v. Whitmore (W., April
12)
Weir v. Freshfield (R., April
21)
In re Brettell } (R., April
Brettell v. Burdett } 27)
Solicitors and General Life

Assurance Co. v. Lamb
(W., April 29)
Coventry v. Chichester (W.,
May 6)
Davies v. Otty (R., May 11)
Pulling v. London, Chatham,
and Dover Railway Co.
(R., May 13)

CAUSES.

Baxendale v. West Midland
Railway Co. (M D, part
heard) *L. C.*
Baxendale v. Great Western
Railway Co. (M D)

Before the Right Hon. the MASTER OF THE ROLLS.

CAUSES, &c.

Lewis v. Templer (F C)
Clark v. Eversfield (M D)
Earnshaw v. Bradbury (M D)
Parton v. Parton (M D)
Ormerod v. Roston (F C)
Markwell v. Bull (M D)
Markwell v. Markwell (M D)
Braithwaite v. Kearns (M D)
Reeves v. Matthews (M D)
Buckingham v. Whitta (M D)
Gamble v. St. Helens Canal
and Railway Co. (M D)
Maw v. Pearson (F C)
Countess of Harrington v. Sir
William Atherton (M D)
May 25
Cooksey v. Cooper (M D)
Davis v. Davis (Cause)
Carr v. Jackson (M D)
Wrigglesworth v. Abbott (M
D)
Howell v. Harper } (F C,
Fulford v. Grice } with Pn.)
Hume v. Laidlaw (M D)
Mattingly v. Stacey (Cause,
witnesses to be cross-exd.)
Saunders v. Evans (M D)
Groom v. Hughes (M D)
Gregory v. Patchett (Cause)
Triscott v. Brown (F C)
Att.-Gen. v. Hospital of St.
John, Bedford (M D)

Baker v. Pritchard (M D)
Davis v. Turvey (F C)
Forster v. Ridley (M D)
London & Westminster Wine
Co. (Limited) v. Wright
(M D)
Thomas v. Mackenzie (M D)
Vivian v. Browne (M D)
Holloway v. Holloway (M D)
In re Fogwill } (F C, adj.
Fogwill v. Sut- } from ch., and
cliff } Sum. to vary)
Winch v. Lumb (M D)
Paul v. Pole (Cause)
Hewitt v. Kelson (Cause)
Moorhouse v. Moorhouse
(Cause)
Rede v. Oaks (F C, and Sum-
mons to vary certificate)
Pilling v. Pilling (M D)
Leary v. Shout (M D)
Edwards v. Johnson (M D)
Brophy v. Bellamy (F C)
Rastall v. Toulson (Cause,
witnesses to be examined)
May 31
Luff v. Lord (M D)
Bryant v. Millard (M D)
Greenway v. Turner (Cause)
Baxter v. Thompson (M D)
Hopkins v. Boardman (M D)
Cogent v. Gibson (M D)

Warden v. Piddington (M D)
 Woolmer v. Hirtzell (M D)
 Philipps v. Davies (F C)
 Milnes v. Hughes (M D)
 Chapman v. Chapman (F C)
 Labelmondier v. Reidy (M D)
 Att.-Gen. v. Earl Craven (F C)
 Guy v. Wilson (Cause)
 Howard v. Earl of Shrewsbury (Cause)
 Ingram v. Brown (F C)
 Neve v. Flood (F C, and two Summonses to vary)
 Dadsell v. McCabe (M D)
 Walters v. Woodbridge (M D)
 Hughes v. Jones (M D)
 Shirley v. Heygate (M D)
 Shirley v. Heygate (M D)
 Shirley v. Heygate (M D)
 Turner v. Turner (F C)
 Richardson v. Goodson (M D)
 Long v. Davey (F C)
 Hart v. Cuthbert (M D)
 Potts v. Britton (M D)
 Jones v. McCarter (F C)
 Wood v. Drew (M D)
 Brawn v. Richardson (F C)
 Chapman v. Jefferson (F C)
 Finch v. Everett (Cause)
 Carth v. Gibson (M D)
 Moss v. Moss (F C)
 King v. Marshall (M D)

Casburn v. Arber (M D)
 In re Mundell (F C,
 Aitchison v. Par- } from
 kinson } chamb.)
 Cresswell v. Jackson (F C)
 Lloyd v. Banks (M D)
 Gammon v. Sandy (M D)
 Harvey v. Trenchard (M D)
 Mathew v. Jennens (F C)
 Ransom v. Ransom (M D)
 Allison v. Allison (F C)
 Small v. Young (M D)
 Lee v. Lee (M D)
 Young v. Young (F C)
 Calliard v. Hanham (M D)
 Arcodeckne v. Beckford (M D)
 Todd v. Simpson (F C)
 Laurie v. Crush (F C)
 Solly v. Hincks (Cause)
 Grimwood v. Webber (M D)
 Renwick v. Hackworth (M D)
 Pratt v. Lord (F C, from chambers)
 Hinde v. Hinde (Sp. C)
 Chadwick v. Turner (M D)
 Wilson v. West Hartlepool Harbour and Railway Co. (Cause)
 Collier v. Knox (M D)
 Banks v. Cartwright (M D)
 Fowler v. Fowler (M D)
 Borrass v. Hodge (M D).

Johnson v. Stavert (M D)
 Lawless v. Thunder (M D)
 Archer v. Alp (M D)
 Hutchison v. Holmes (M D)
 Walker v. Kenrick (M D)
 Dames v. Ward (Cause)
 Ihler v. Davies (F C, Ptn in Daveson v. Battine, after term)
 Weir v. Weir (M D)
 Prowett v. Prowett (M D)
 Malpas v. Peake (M D)
 Clark v. Clark (M D)
 Sporie v. Barnaby (Cause, Ptn)
 Jamieson v. Chater (M D)
 Banner v. England (Cause)
 Scholey v. Lee (Cause)
 Corner v. Okey (M D)
 Franckum v. Harford (F C)
 In re Whitehead (F C,
 Godfrey v. White- } from
 head } chamb.)
 Bartley v. Bartley (Sp C)
 Wroe v. Seed (F C)
 Poole v. Beddall (F C)
 Barrow v. Griffiths (F C,
 Barrow v. Newman } and two
 } Sum.)
 Cockshott v. Lister (F C)
 Heslop v. Magnay (F C)
 Joel v. Eastham (Cause and Summons)
 Stubbings v. Fisher (F C)
 Woodhouse v. Hall (F C)
 Nicholson v. Newton (F C)
 Head v. Valpy (F C)
 Williams v. Wilson (Sp C)
 Wooton v. Hulse (F C)
 Little v. Newburn (F C, M)
 Taylor v. Yarde (F C)
 Lane v. Brillman (Cause)
 Snowden v. Wright (F C, set down by defendant)
 Newby v. Cram (Cause)
 Bramwell v. Cram (Cause)
 Crozier v. Newby (Cause)
 Miller v. Bush (M D)
 Rooth v. Sharpe (M D)
 Radcliffe v. Radcliffe (Cause)
 Kennedy v. Killick (M D, Ptn)
 Holberton v. Clement (M D)
 Cubitt v. Smith (M D)
 Massey v. Massey (Cause)
 Green v. Crockett (Cause)
 Postgate v. Barnes (M D)
 Goldsmid v. Heathcote (M D)
 Cornforth v. Pounton (Cause)
 Owens v. Hunt (F C)
 Stronach v. Unthank (M D)
 Girdlestone v. Richards and 5 other causes (F C, adj. Ptn, and Summons)
 Gadsby v. Green (M D)
 Staniland v. Wade (Cause)
 Blackburn v. Horwood (F C)
 Stapleton v. Salisbury (M D)
 Earl of Darnley v. London, Chatham, and Dover Railway Co. (Cause)
 Normandy's Patent Marine Aerated Fresh Water Co. (Limited) v. Normandy (Cause)
 Martin v. Francis (M D)
 Buckley v. Blackburne (M D)
 Hearn v. Bannister (M D)
 Crossley v. Lord (F C)
 Tottenham v. Emmet (M D)
 Godfrey v. Whitehead (F C)

Vickers v. Todd (M D)
 Smith v. Moreton (M D)
 Fletcher v. Fletcher (Sp C)
 Scott v. Walker (F C)
 Long v. Bowring (M D)
 Silvester v. Silvester (F C)
 Turner v. Birkenshaw (M D)
 Bothamley v. Gordon (Sp C)
 Emmet v. Tottenham (M D)
 Bubb v. Green (M D)
 Phillips v. Phillips (M D)
 Simpson v. Terry (M D)
 Perrott v. Edmunds (Cause)
 Burton v. Granger (M D)
 Howard v. Howard (M D)
 Redman v. Gregory (M D)
 Harrison v. Collinson (Cause)
 Stares v. Penton (M D)
 Moss v. Chapple (M D)
 Muspratt v. Ventham (Cause)
 Priestley v. Ashworth (M D)
 Attwood v. Ware (Cause)
 Daviss v. Woodman (M D)
 Wilkie v. Becham (F C)
 Millard v. Harvey (M D)
 Philpot v. Haynes (M D)
 Goodman v. Jones (Cause)
 Thompson v. Thompson (Ca.)
 Liddon v. Howard (M D)
 Pomfret v. Plucknett (M D)
 Morgan v. Morgan (M D)
 Withicomb v. Wamby (M D)
 Jarvis v. Ferguson (F C)
 Maythorn v. Palmer (M D)
 Charlesworth v. Jennings (M D)
 Ridley v. Ridley (M D)
 Mitchell v. Mitchell (F C, M)
 Weston v. Collins (M D)
 Wood v. Cox (F C)
 Turrell v. Hocking (M D)
 Rackham v. De la Mere (F C)
 Mac Rae v. Allardyne (F C)
 Scott v. Smeeton (M D)
 Beresford v. Conyers (M D)
 Bailly v. Keighley (M D)
 Phillips v. Phillips (M D)
 Biddulph v. Biddulph (M D)
 Jeffreys v. Stewart (F C)
 Sir C. C. W. Dourville, Bart., v. Wilkie (M D)
 Plucknett v. Pomfret (M D)
 Lindsay v. Orrman (M D)
 Staffordshire and Worcester-shire Canal Co. v. Birmingham Canal Navigation (M D)
 Phillips v. Storkie (F C)
 Duckworth v. Hudson (M D)
 Hardy v. Hardy (M D)
 Holloway v. Webber (M D)
 Hazlerigg v. Robson (F C)
 Black v. Black (Cause) SA
 Potter v. Cross (M D)
 Taylor v. Sparrow (F C)
 Piggott v. Piggott (M D)
 Crow v. Cross (F C)
 Davis v. Davis (M D) SA
 Tee v. Bridger (Cause)
 In re Davies (F C from Baldwin v. Read } chambers)
 Bryson v. Hull (F C) SA
 Hull v. Bryson (F C)
 Leyland v. Taylor (M D) SA
 Marshall v. Smith (Cause)
 Wetton v. Wildgoose (M D)
 Hervey v. Hethorn (M D)
 Hervey v. Chapman (M D)
 Butt v. Graham (F C)
 Windus v. Graham (F C)
 Parry v. Hayward (M D).

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

CAUSES, &c.

Wilkinson v. Slee (M D)
 Gill v. Aggs (Old Exons)
 Hewitt v. Howitt (M D)
 Gaskoin v. Millward (M D)
 Garmons v. Garmons (Cause)
 Shrubsole v. Schneider (Trial by jury) June 1
 Schneider v. Shrubsole
 Salisbury v. Churchill (M D)
 Dreyon v. Dreyon (F C)
 Barker v. Peile (M D)
 Bennett v. Bennett (M D)
 Williams v. Williams (Cause)
 Williams v. Williams (Cause)
 Baron L. N. D. Rothschild v. Cannon (Cause)
 Watson v. Sir G. Rose (M D)
 Riddel v. Smith (Cause, witnesses to be examined) May 30
 Lee v. Hamerton (M D)
 Adams v. Hebdon (Cause)
 Garner v. Garner (M D)
 Beasley v. Attenborough (M D)
 Tiffen v. Parker (Cause, witnesses to be cross-examined) May 25
 Homer v. Homer (M D)
 Rayner v. Stears (M D)
 Jones v. Rees (M D)
 Barber v. Kent (Cause set down by defendant)
 Reid v. Don Pedro North del Rey Gold Mining Co. (Limited) (Cause)
 Goldschmidt v. Hall (M D)

Sharpe v. Waldron (M D)
 Kendall v. Cook (Cause)
 Cook v. Atkinson (Cause)
 Besset v. Dear (Cause)
 Hower v. Keats (M D)
 Lord Ranelagh v. Melton (M D)
 Hendrie v. Springfield (Cau.)
 Wardell v. Lawty (Cause)
 Riley v. Croydon (M D)
 Lownborough v. Coleman (M D)
 Smart v. Hawksworth (M D)
 Poole v. Foxwell (M D)
 Bruton v. Morris (M D)
 Collinson v. White (M D)
 Smith v. Charles (M D)
 Watson v. Rose, Knt. (M D)
 Thrupp v. Preston (F C)
 In re Cresswell (F C, adj.
 Coxwell v. Frank- } from
 linsky } chamb.)
 Parsons v. Peters (F C)
 Jackson v. Parkin (M D)
 Leese v. Knight (F C)
 Millard v. Ellyett (M D)
 Savile v. Kinnaird (M D)
 Huskisson v. Underhill (F C)
 Watts v. Griffin (M D)
 Hull v. Falconer (F C)
 Gant v. Heales (M D)
 Hakewill v. White (F C)
 Wyndham v. Rickford (F C)
 Earl of Eglinton v. Lamb, Bart. (M D)
 Earl of Eglinton v. Lamb, Bart. (M D)
 Hare v. Pryce (F C).

Before the Vice-Chancellor Sir JOHN STUART.

CAUSES, &c.

Naylor v. Vickers (E to ans.)
 Mitchell v. Windham (M D)

Willson v. Featherstone (F C)
 West v. Borrett (M D)

Before the Vice-Chancellor Sir W. P. Wood.

CAUSES, &c.

Hutchings v. Leader (M D)	Pearson v. Buggins (M D)
Leader v. Hutchings (pt. hd.)	Harrison v. Harrison (M D)
Dent v. Clayton (Sp C)	Tynte v. Beavan (Cause)
Ford v. Tynte and 6 other causes (Rehearing)	Cox v. Taylor (M D)
Parsons v. North (M D)	Schweitzer v. Holder (M D)
Tompsett v. Harmer (F C)	Fisher v. Dingley (M D)
Foster v. Gladstone (M D)	Fisher v. Phelps (M D)
Beavill v. Sheehy (M D)	Wilson v. Bullivant (M D)
Att.-Gen. v. Metropolitan Board of Works (M D)	Thomas v. Thomas (M D)
Tynte v. Randolph (Cause)	Forbes v. Mackenzie (Cause)
Simpson v. Brown (M D)	Browne v. Freeman (M D)
Wedderburne v. Thomas (Can. pro confesso)	Randles v. Salter (F C, and Summons)
Tynte v. Ford (Cause)	Allan v. Scott (M D)
Davies v. Stocks (M D)	London and South-western Railway Co. v. Bridger (M D)
Allan v. Sugden (M D)	Watkins v. Weston (M D)
Durrant v. Durrant (M D)	Shreeve v. Shreeve (F C)
Cooper v. Ricardo (Cause)	Chaytor v. Sittingbourne and Shoerness Railway Co. (M D)
Simpson v. Holliday (Trial before the Court without a jury)	Daniel v. Courthorpe (M D)
Fenton v. Hankins (F C)	Hooper v. Gunn (Cause)
Salter v. Cliff (Cause, cross-examination of witnesses)	McLellan v. Gunn (Cause)
May 25	Aylwin v. Challen (F C, and Summons to vary)
Orridge v. Wilks (M D)	Langford v. Christmas (M D)
Bishop v. Scott (M D)	Taylor v. Cox (Cause)
Cropton v. Corner (M D)	Fuller v. Chamler (Rehearing)
David v. Jenkins (M D)	Eastaff v. Carrier (F C)
Governors of St. Thomas's Hospital v. Corporation of London (M D)	Sichel v. Raphael (Cause against defendant Graham only)
Edgley v. Kellock (M D)	White v. Lyons (M D)
Taddy v. Gillow (M D)	Walker v. Drummond (F C)
Daniel v. Arkwright (Cause)	James v. Pugh (M D)
Hammer v. Chance (M D)	Tongue v. Tongue (Sp C)
Evans v. Stratford (Sp C)	Smith v. Baker (M D)
Elkins v. Ward (Cause)	Fisher v. Moon (M D)
Smalley v. Loftus (M D)	Underhay v. Tyler (M D)
Medland v. Horsham and Guildford Direct Railway Co. (M D)	Bird v. Lake } (Cause)
Defries v. Defries (M D)	Bird v. Turner }
Bridges v. Highton (M D)	Porter v. Dawson (F C)
	Davies v. Davies (M D).

NISI PRIUS SITTINGS, IN AND AFTER TRINITY TERM, 1864.

Court of Queen's Bench.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Thursday, May 26	There will not be any sitting
2nd sitting, Thursday, June 2	during term in London.
3rd sitting, Thursday 9	
For undefended causes only.	

After Term.

Tuesday June 14 | Tuesday June 26
The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

N. B.—The Associate's Offices will be closed on Tuesday, the 24th May, being the Queen's birthday. Causes for trial at the first sitting, must be entered not later than Monday, the 23rd May.

Court of Common Pleas.

In Term.

MIDDLESEX.	LONDON.
Thursday May 26	Tuesday May 31
Thursday June 2	Tuesday June 7

After Term.

Tuesday June 14 | Monday June 27

The Court will sit during and after term at ten o'clock.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

N. B.—Tuesday, the 24th May, being the Queen's birthday, the Associate's Office will be closed on that day. Causes for trial at the first sitting in Middlesex must be entered not later than Monday, the 23rd May.

Exchequer of Pleas.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Thursday, May 26	There will not be any sittings
2nd sitting, Thursday, June 2	during term in London.
3rd sitting, Thursday 9	

After Term.

Tuesday June 14 | Monday June 27

The Court will sit during and after term at ten o'clock.

N. B.—Tuesday, the 24th May, being the Queen's birthday, the Associate's Offices will be closed on that day. Causes for trial at the first sitting, must be entered not later than Monday, the 23rd May.

COMMON-LAW CAUSE LISTS, TRINITY TERM, 1864.

Court of Queen's Bench.

NEW TRIALS.

FOR JUDGMENT.

Norfolk—Coe v. Wise
Midd.—Hodgman v. West
Midland Railway Co.
Glamorgan—Morgan v. Vale of Neath Railway Co.
Nottingham—Thackeray v. Wood

FOR ARGUMENT.

Moved Trin. Term, 1862.

Tried during Term.

Midd.—Tennant v. Bankart (Part heard, stands for arrangement)

Moved Mich. Term, 1863.

Bristol—Gay v. Matthews

Moved Hil. Term, 1864.

Liverp.—Priestley v. Hopwood (Part heard)

Moved Easter Term, 1864.

Midd.—Bentlif v. Caledonian Steam Towing Co.

Lon.—M'Crea v. Holdsworth & ors.

— Morton v. Joshua

York—Baker v. Gray

Northumberland—Tyne Improvement Commissioners v. General Steam Navigation Co.

Cumberland—Swan v. Whitehaven Junction Railw. Co.

Lancaster—Chadwick v. Corporation of Burnley

Liverp.—Haselden v. Byrom
— Wilson v. Rankin (To be argued with D.)

— Husted & an. v. Lancashire and Yorkshire Railway Co.

— Blair v. Hall & an.

— Holt v. Ismay

Essex—Lee & an. v. Patrick

Surrey—Chambers v. Manchester and Milford Railway Co.

Carmarthen—Stepney & ors. v. Kirkwood & ors.

— Palmer & an. v. Rees

Chester—Hughes v. Birkenhead Improvement Commissioners (To be argued with D., 1st action)

— Same v. Same (To be argued with D., 2nd action)

— Davies v. Same (To be argued with D.)

Hants—Boulter v. Alden

Bristol—Styles v. Cardiff Steam Navigation Co.

Anglesey—Parry & an. v. Jones

Stafford—Jukes v. London & North-western Railway Co.

Monmouth—James v. Levick

— Same v. Same

Tried during Term.

Midd.—Healey v. Thames Valley Railway Co.

SPECIAL PAPER.

Those marked thus * are Special Cases, and thus † Demurrers.

FOR JUDGMENT.

† Lloyd v. Ginhert & ors.
† Olerby & Wife v. Ryde Commissioners

FOR ARGUMENT.

† Worthington v. Ludlow (Sp. C. to be stated)
† Harris v. Swinburn

*Gill v. Mayer, &c. of Birmingham
 *Crocker v. Waine
 Hunter v. Middlebrook (Ap. from County Court)
 †Moore & ors. v. Stroud
 †McLeamy v. Lord Ebury
 *Sale v. Livezey
 †Gandy & Wife v. Jubber
 †Roberts & Wife v. Roberts
 †Armitage & an. v. Barker
 †Denters v. Townsland
 †Gardiner v. Colyer
 †Hughes v. Birkenhead Improvement Commissioners (Case in New Trial Paper to be argued with this D.)
 †Davies v. Same
 †Goddard v. Wellburn

†Wood v. Charing-cross Railway Co.
 †Davies v. England & an.
 †Wilson v. Rankin (Case in New Trial Paper to be argued with this D.)
 *Ford v. Somerby
 †Taylor v. Holloway
 *Gledstanes & ors. v. Corporation of the Royal Exchange
 *Brewer v. Great Western Railway Co.
 *Sterling v. Maitland & an.
 †Longhurst v. Haynes
 †Williams v. Booth & an.
 †Threny v. Lord Fermoy & an.
 †Keyes v. Elkins
 †Webb v. Barber & ors.

Kingston-upon-Hull Caley v. Local Board of Health of Kingston-upon-Hull.
 Bedfordshire Reg. v. Blayfield and Watkin.
 Metropolitan Police District.. } Williamson v. Bilborough.
 Berkshire Giles v. Siney.

Court of Common Pleas.

NEW TRIALS.

Moved Mich. Term, 1863.
 Midd.—Packer v. The Great Western Railway Co. (To stand till Beal v. South Devon Railway Co. of in Exch. Chamber is disposed of)
Moved Easter Term, 1864.
 Midd.—Miller v. Grubb
 — Hancock v. Lovell
 Lond.—Joyce v. Swann
 — Ronneberg & an. v. Falkland Islands Co.
 — Clay v. Ray
 — Turquand v. Moss
 — Gallagher v. Piper & an. (The case of Lovegrove v. London and Brighton Railway Co. to be argued with this rule)
 — Beresford & ors. v. Montgomerie
 — Nothard v. Pepper
 — Nicholl v. Greaves
 — Myers v. Dubbs
 — Thorp v. Soanes & ors.
 Lond.—Lilten v. Dalton
 — Williams v. Evans
 Surrey—Maughan v. Sharpe
 — Lovegrove v. London & Brighton Railway Co. (This rule to be argued with Galaher v. Piper)
 — Spooner v. Roas & an.
 Chester—Bourke v. Clay
 Liverp.—Heyworth v. Knight
 — Andrews v. Lawrence
 — Bremner & ors. v. Hull
 York—Mead v. Wright
 — Burgess v. Peacock
 — Hill & ors. v. Nuttall
 — Edmondson v. Same
 Norfolk—Read v. Edwards
 Hants—Fryer v. Cope
 York—Shaw v. Shaw (Rule suspended)
 Lond.—Antrobus v. Lee (Postponed until Lee v. Jones, in Ex. Cham. is disposed of)
 — Mallet v. Bateman (Until appeal in this case is disposed of).

ENLARGED RULES.

First Day.

In re J. Wills
 Wakefield v. Burke & ors.
 In re Pemberton & Williams
 Reg. v. Lord Mayor and Aldermen of London
 Reg. v. Justices of Sussex
 Reg. v. Bullock
 Reg. v. Local Marine Board of London
 Reg. v. Bodkin
 Reg. v. Wycombe Railway Co.
 Churchwardens of Potton v. Brown
 June 9.
 Reg. v. Midland Railway Co.

CROWN PAPER.

Teakesbury Reg. v. Severn Navigation Commissioners.
 Surrey Measor. (To stand over till judgment given in the House of Lords in the Mersey Docks case).
 — Knowlden & ors. v. Reg.
 Bristol Morgan v. Pope.
 Gloucestershire.. Midland Railway Co. v. Churchwardens and Overseers of the Parish of Badgworth.
 Lancashire London and North-western Railway Co. v. Surveyors of the Highways of the Township of Skerton.
 — Latham & ors. v. Reg.
 Yorkshire Reg. v. Local Board of Health, Madgley.
 Surrey Rapley v. Richards.
 Essex Reg. v. Overseers of the Parish of South Weald.
 Cumberland — Inhabitants of Great Salkeld.
 Portsmouth — War Department and Meade.
 Bedfordshire Churchwardens of Potton v. Brown.
 Cornwall Looe Harbour Commissioners v. Churchwardens and Overseers of the Borough of East Looe.
 Durham Taylor v. Darlington Local Board of Health.
 Yorkshire West Riding and Grimsby Railway Co. v. Wakefield Local Board of Health.
 Wiltshire Heywood v. Overseers of Brinkworth.
 Lancashire Staley v. Overseers of the Poor of the Township of Castleton.
 Somersetshire .. Reg. v. Pedlar.
 — Hooker.
 — Sharland.
 — Sherry.
 — Elworthy.
 Essex Dare.
 Norfolk De Cana v. Powley.
 — De Cana v. Powley.
 Yarmouth Reg. v. Purdey.
 — Purdey.
 Lincolnshire Surveyors of the Highways of Willoughby with Scoothby.
 Cheshire Reg. v. Guardians of the Poor of the Nantwich Union.
 — Guardians of the Congleton Union.
 — Guardians of the Great Broughton Union.
 Lancashire Cleworth.

DEMURRER PAPER.

SPECIAL ARGUMENTS.

Tuesday, May 31.

Anderson v. Curtis (D.)
 Pimm v. Undershell (County Ct. Ap.)
 Cuadra v. Swann (D.)
 Leader v. Yell (Ap.)
 Wallington v. Willes (Ap.)
 Gerring v. Barfield (Ap.)
 Girvin v. De Mattos (D.)
 Duncan v. De Mattos (D.)
 Dean and Chapter of Christ Church, Oxford v. Duke of Buckingham (Case by order)
 Holford v. Sweet (D.)
 Hobbs v. Henning (D.)
 Coles v. Dickinson (Ap.)
 Guardians, &c. of Keelmen on the River Tyne v. Davison & ors. (Case at Nisi Prius)
 Eyre & an. v. Archer (D.)
 Lewin v. Mears (D.)
 Bridges v. Potts & an. (Case by order)
 Guardians, &c. of Keelmen on the River Tyne v. Elliot & ors. (Case at Nisi Prius)
 Fitton v. Accidental Death Insurance Co. (D.)
 Vestry of Shoreditch v. Hughes (Case by order)
 Thomas v. Lord George Paget (Case at Nisi Prius).
 Barber v. Lawton (County Court Appeal)

ENLARGED RULES.

First Day.

Duncan & an. v. De Mattos
 Thelwall v. Yelverton
 Webbe v. Royal Dramatic College
 Same (ex parte) v. Thomas Clarke

Second Day.

Pepper v. Anglo Australian and Universal Family Life Assurance Co.
 Sarman & an. v. Gelpecke & ors. (Goschen & ors., garnishees).

Court of Exchequer.

SITTINGS—TRINITY TERM.

Days in Term.

Monday May 23
 Tuesday 24
 Wednesday 25
 Thursday 26

Banc.

Errors.

 Circuits chosen.

<i>Days in Term.</i>		<i>Banc.</i>
Friday	27	.....
Saturday	28	.....
Monday	30	Special Paper.
Tuesday	31	.....
Wednesday	June 1	Special Paper.
Thursday	2	.....
Friday	3	.....
Saturday	4	Criminal Appeals.
Monday	6	Special Paper. (Trial at Bar).
Tuesday	7	.....
Wednesday	8	Special Paper.
Thursday	9	.....
Friday	10	.....
Saturday	11	.....
Monday	13	.....

<i>Days in Term.</i>		<i>Nisi Prius.</i>
Thursday	May 26	Middlesex, first Sitting.
Thursday	June 2	Middlesex, second Sitting.
Thursday	9	Middlesex, third Sitting.

NEW TRIALS.

FOR JUDGMENT.

Glouc.—Great Western Railway Co. v. Robins
 Brecon.—Williams v. Jones
 Derby.—Bowyer v. Silcock
 (Standing for arrangement)
 Lanc.—Sykes v. Farlam

FOR ARGUMENT.

Moved Easter Term, 1863.
 Lond.—Beavan v. Countess of Waldegrave
Moved Hil. Term, 1864.
 Liverp.—Brabner v. Macann
Moved Easter Term, 1864.
 Midd.—Newall v. Elliott

Liverp.—Davies v. Smyth & ors.
 Lincoln.—W. Harrison v. Gt. Northern Railway Co.
 — H. Harrison v. Great Northern Railway Co.
 — Gresham v. Great Northern Railway Co.
 — Woolhouse & ors. v. Gt. Northern Railway Co.
 York.—Scott v. Firth & ors.
 — Smith v. Jackson

Moved after the 4th day of Easter Term, 1864.

Midd.—Johnson v. Hilbury.

SPECIAL PAPER.

FOR JUDGMENT.

Stockport Waterworks Co. v. Potter & ors. (Sp. C.)
 Hudson & an. v. Barclay (D.)
 Strick v. De Mattos (D.)
 Dewhurst v. Jones (D)

FOR ARGUMENT.

Brewer v. Dimmack (D., part heard, standing over for arrangement)
 Goddard & ors. v. Cresswell & an. (D.)

The Anglo-Californian Gold-mining Co. v. Lewis (D., to stand over)
 Earl of Lonsdale v. British & Irish Magnetic Telegraph Co. (Limited) (D., to stand over till after argument of Sp. C.)
 Birch v. Brayshaw (Sp. C.)
 Lloyd v. General Iron Screw Collier Co. (Limited) (D.)
 Brown v. Cross (D.)

Imperial Parliament.

HOUSE OF LORDS.—Thursday, May 12.

The Registration of County Voters (Ireland) Bill passed through committee.

The Local Government Supplemental Bill was read a second time.

The Under-Secretaries Indemnity Bill was read a second time.

The Common-law Procedure (Ireland) Act Amendment Bill passed through committee.

The Promissory Notes and Bills of Exchange (Ireland) Bill was read a third time, and passed.

The Customs and Inland Revenue Bill was also read a third time, and passed.

The Marquis of Westmeath moved that an humble address be presented to her Majesty for a copy of any memorial received by the Lord Lieutenant of Ireland, or the Irish Government, praying for the release of Michael Duigan, Patrick Duigan, and Patrick Egan, three prisoners confined in the county gaol of Westmeath, convicted at the summer assizes

of 1861 of agrarian offences, or any of them, and of any written communication forwarding the same, and recommending their enlargement to the Irish Government. The noble Marquis considered that it was owing to the capricious interference of the present Lord Lieutenant that agrarian offences were so numerous in Ireland, for, by his meddling with the sentences passed upon prisoners, by shortening the term of imprisonment, the people had ceased to respect the law.

The Earl of Donoughmore said it was rumoured that the person who brought the case before the Lord Lieutenant was one of the members of the county, and that his constituents being anxious to have the men released, brought, through him, a pressure of political influence on the Lord Lieutenant.

Earl Granville said the House would understand that he did not object to produce the memorial, and any letters of a public nature which accompanied it; not the communications between the judges and the Government, and the confidential communications.

The motion was agreed to.

Friday, May 13.

The royal assent was given by commission to the following bills:—The Customs and Inland Revenue; Charitable Insurances Inrolments; Land Drainage (Provisional Order); High Court of Bombay; Vestry Cess Abolition (Ireland); Court of Chancery (Dispatch of Business); Promissory Notes and Bills of Exchange (Ireland); Joint-stock Companies (Foreign Countries); and to some private bills.

Lord Chelmsford said, within the last half-hour some very important returns had been placed in his hands relative to the county courts. This measure was one of a most important character, and he thought the returns should have been laid on the table at an earlier date. Under the circumstances, he must ask the noble and learned Lord on the woolsack to postpone the second reading of his bill, which stood on the paper for this day.

The Lord Chancellor said he would postpone the second reading till the first day upon which the House met after the recess.

The order was postponed accordingly.

The Regius Professorship of Oxford Bill, after some debate, was lost by a majority of thirty, upon the previous question being moved by Lord Redesdale.

The Registration of County Voters (Ireland) Bill was read a third time, and passed.

The Under-Secretaries Indemnity Bill went through committee.

The Common-law Procedure (Ireland) Act Amendment Bill, with amendments, was considered.

Their Lordships then adjourned to Monday, the 23rd May.

HOUSE OF COMMONS.—Thursday, May 12.

The Railway Companies Powers Bill was read a second time.

The Railways Construction Facilities Bill was read a second time.

The Naval Prize Bill was read a third time, and passed.

Sir G. Grey obtained leave to bring in a bill for amending the law relating to seats in the House of Commons by persons holding certain public offices.

Friday, May 13.

THE GIPSEY CASE IN CORNWALL.

Sir G. Grey.—I answered a question the other evening of the hon. member opposite (Mr. Hunt) with regard to the committal of some gipsies in Cornwall for sleeping under a tent. Since then I have written to the magistrate requesting him to furnish me with the minutes of evidence, and the report of the case, and it turns out that they were committed under the Vagrant Act, and not for sleeping under a tent. I have received a letter from the magistrate, which, in justice to him, I desire to read to the House. It is as follows:—

“Lelant Vicarage, May 12.

“Having received this morning your letter of the 10th inst., requesting me to furnish you with a full report of the case of the committal of the gipsies by me, I beg to communicate to you the following particulars:—At Redruth,

some few days before the committal, one of the them was apprehended by the police for vagrancy, and was discharged on her promising to leave the neighbourhood; instead of doing which she was found the following day at Camborne, only three miles off, telling fortunes. On another day subsequent, a man and woman of the party were found sleeping together under a waggon which did not belong to them, and again cautioned by the police. On the Saturday previous to my committal the whole party were found on the estate of Trellissick, in the parish of St. Erth, where they did a great deal of injury, breaking down trees and lighting fires, when the police again cautioned them, and finding them there again on Monday apprehended them, and brought them to me. They had passed through the western part of the county, between Redruth and St. Erth, begging and telling fortunes. The superintendent of police had given particular direction to the police to watch them, as there had been been many thefts committed in that part of the county, and this party of gipsies had been suspected of being connected with them. When the party were brought before me I examined them individually and collectively, and found that they had no visible means of subsistence, and could give no satisfactory account of themselves. Under these circumstances, for the safety of the country, I considered it my duty to commit them."

The House adjourned till Thursday, the 19th May.

CAMBRIDGE, May 10.—*Proposed New System of Examination.*—The Syndicale, appointed on the 25th February, 1864, have made a report to the Senate, recommending the following special examination in law for ordinary degrees:—"That there shall be an examination, beginning on the Monday next but one before the general admission to the B.A. degree, in the Easter Term, in the following branches of law, viz. 1. Justinian's Institutes, in the original Latin, book 2, and book 3 from tit. 13 to the end. 2. A work on English law. 3. Lord Brougham's History of the Rise and Progress of the English Constitution, or the elements of Hindu and Mahomedan law. That the paper in Justinian's Institutes shall consist of passages for translation, and questions upon the subject. That the Board of Legal Studies shall issue notice of the work or portion of a work selected in English law in the preceding Michaelmas Term."

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At the ANNUAL MEETING of the PROPRIETORS, held on THURSDAY, the 4th February, 1864, at the LONDON TAVERN, Bishopsgate-street, the following Report for the Year ending the 31st December, 1863, was read by the Secretary.

WILLIAM NICOL, ESQ., M.P., IN THE CHAIR.

REPORT.

The Directors, in submitting to the Proprietors the Accounts of the Bank for the Half-year ending the 31st December, 1863, have much satisfaction in reporting that the Net Profit for the Six Months, after deducting all charges, amounts to 84,335*l.* 0*s.* 2*d.*, which, added to 14,343*l.* 10*s.* 6*d.* brought forward from the last Account, results in a total of 98,668*l.* 3*s.* 10*d.*

Out of this Sum the Directors recommend that the usual Dividend of 61. per Cent., together with the Bonus of 61. per Cent., be declared for the Half-year, making, with the Dividend paid in August last, 187. per Cent. for the Year. They further propose to carry 10,000*l.* to the Reserve Fund, making that Fund 100,000*l.*, leaving 16,688*l.* 3*s.* 10*d.* to be carried forward to Profit and Loss new Account.

In consequence of the great increase of the Business of the Bank, the Directors consider it advisable further to increase the Capital of the Company, by the issue of 7500 New Shares, to be offered, *pro rata*, amongst the Proprietors, as they appeared in the Register on the 3rd instant, last date when the Transfer Books of the Company were closed; such Shares to be issued at the price of 40*l*. each, being a premium of 20*l*. per Share. Full particulars of the Issue will be transmitted by Circular to each Proprietor.

This operation will produce 300,000*l.*, out of which 150,000*l.* will be added to the Capital of the Company, and 150,000*l.* (being the Premium on the Shares), will be added to the Reserve Fund, raising the former to 750,000*l.*, and the latter to 250,000*l.*—together One Million.

The Directors regret having to announce the decease of HENRY OVERTON, Esq., for many years one of the Auditors of the Bank. The decease creates a vacancy in the Auditorship, which it is in the power of the Meeting to fill up.

The Directors retiring by rotation are—

PHILIP PATTON BLYTH, Esq.,

EDWARD HUGGINS, Esq.,

and WILLIAM LEE, Esq., M.P.,

all of whom are eligible for re-election, and offer themselves accordingly.

The Dividend will be payable at the Head Office, or at any of the Branches, on and after Monday, the 15th instant.

BALANCE SHEET

Of the London and County Banking Company, 31st December, 1863.

Dr.						Ca.	
To Capital paid up.....	£600,000	0	0	By Cash on hand, at Head Office and Branches	£1,238,139	1	8
Reserve Fund	90,000	0	0	Cash placed at Call and at Notice ..	1,066,002	7	8
Amount due by the Bank for Customers' Balances, &c.....	£8,245,723	9	4				2,304,141 8 5
Liabilities on Acceptances and Indorsements by the Bank, Circular Notes, and Letters of Credit.....	1,088,916	1	9	Investments, viz—			
				Government and Guaranteed Stocks	839,158	16	9
				Other Stocks and Securities	110,936	17	9
			9,334,638	11			950,095 14 6
Profit and Loss Balance brought from last Account	14,343	3	8	Discounted Bills, and Advances to Customers in Town and Country			6,784,844 14 6
Gross Profit for the Half-year, after making Provision for Bad and Doubtful Debts	227,239	9	7	Freehold Premises in Lombard-street and Nicholas-lane, Freehold and Leasehold Property at the Branches, with Fixtures and Fittings			110,630 18 7
			241,582	13			49,767 7 8
				Interest paid to Customers			
				Salaries and all other Expenses at Head Office and Branches, including Income Tax on Profits and Salaries			66,721 1 2
			£10,266,221	4			£10,266,221 4 4
<i>Profit and Loss Account.</i>							
To Interest paid to Customers	£49,787	7	2	By Balance brought forward from last Account.....	£14,343	3	8
Expenses as above	66,721	1	2	Gross Profit for the Half-year, after making provision for Bad and Doubtful Debts	227,239	9	7
Rebate on Bills not due, carried to New Account.	26,406	1	1				
Reserve Fund	10,000	0	0				
Dividend of 6L per Cent. for the Half-year	36,000	0	0				
Bonus of 6L per Cent.	36,000	0	0				
Balance carried forward	16,668	3	10				
			£241,582	13			£241,582 13 8

We, the undersigned, have examined the foregoing Balance Sheet, and have found the same to be correct.

(Signed) JOHN WRIGHT,
R. H. SWAINE. } Auditors.

London and County Bank, 28th January, 1864.

Printed by HENRY HANSARD, at his Printing Office, in Parker Street, in the Parish of St. Giles-in-the-Fields, in the County of Middlesex; and published by HENRY SWEET, of No. 3, CHANCERY LANE, and RICHARD STEVENS, of 26, BELL YARD, LINCOLN'S INN, at the Office of the Editor, No. 39, BELL YARD, LINCOLN'S INN.—Saturday, May 21, 1844.



No. 490, NEW SERIES.—Vol. X.
No. 1429, OLD SERIES.—Vol. XXVIII.

MAY 28, 1864.

PRICE 1s.

Legal and General Life Assurance Society.

10, FLEET-STREET, LONDON, E. C.

TRUSTEES.

The Right Hon. Sir THOMAS ERSKINE.
The Right Hon. Sir J. L. KNIGHT BRUCE, Lord Justice.
The Hon. Sir WILLIAM PAGE WOOD, Vice-Chancellor.
The Hon. Mr. JUSTICE WILLIAMS.

The Hon. Sir GEORGE ROSE.
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BIGG, EDWARD SMITH, Esq.
BOLTON, JOHN HENRY, Esq.
BRODERIP, FRANCIS, Esq.
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ROSE, The Hon. Sir GEORGE.
SCADDING, EDWIN WARD, Esq.
SMITH, MONTAGUE EDWARD, Esq., Q. C., M.P.
TILSON, THOMAS, Esq.

Capital invested in the names of the Trustees	£1,318,184
Share Capital	£1,000,000
Less, paid up and included in the above sum	160,935
	839,065
Annual Income from Investments and Premiums (increasing yearly)	165,000
Total Sum assured by existing Policies	3,513,069
Total Reversionary Bonus added thereto	425,000
Claims paid on Policies	941,013
Bonus paid to Policy-holders	176,890

No extra Premium required for residence in any part of the world distant more than 33 degrees from the Equator.

Whole World Policies granted on payment of a single extra Premium of Ten Shillings per Cent. when the Directors are satisfied that the Life Assured is at the time within the limits allowed by the ordinary Policies of the Society, and has then no intention of going beyond them, and that his occupations are not likely to lead him beyond them, or to be more than ordinarily hazardous.

Policies protected from dispute. The age of the person Assured, and other necessary particulars admitted at the time of issuing the Policy.

Four-fifths, or 80 per cent. of the Profits allotted to the Assured every fifth year.

SPECIMEN OF BONUS ADDED TO POLICIES.

No. of Policy.	Amount Assured.	Bonus paid.	Year of Death.	Age when Assured.
	£	£		Years.
982	5000	1224	1857	40
1558	5000	1157	1857	45
6	5000	1693	1857	44
941	2500	771	1858	68
646	5000	1742	1858	54
13	5000	2091	1859	61
831	5000	1433	1860	37
870	4000	1438	1860	50
643	3000	1149	1860	57
2871	5000	907	1861	36
2907	5000	1180	1862	36
1751	1000	318	1862	48
309	5000	1899	1862	40

The Bonus may, at the option of the Assured, be applied in reduction of Annual Premiums, which have been thereby reduced 25 per cent., or surrendered for a cash payment.

No loss of Bonus in case of death before the division of Profits, a Bonus being paid for each year since the last division at the rate of the last Bonus.

Loans granted to the full surrender value of the Policies without charge, except for the stamp duty of 2s. 6d. per cent.

Forms of Proposal, and all further information, including a copy of the Society's Accounts, to be had on application by letter, or in person to

JOHN NETTLETON, Secretary.

10, Fleet-street, London.

London and County Banking Company.

ESTABLISHED 1836.

SUBSCRIBED CAPITAL..... £1,875,000, IN 37,500 SHARES OF £50 EACH.

PAID-UP CAPITAL....£680,000. — RESERVE FUND....£180,000.

DIRECTORS.

THOS. TYRINGHAM BERNARD, Esq., M.P.
 PHILIP PATTON BLYTH, Esq.
 JOHN WILLIAM BURMESTER, Esq.
 COLES CHILD, Esq.

HUGH C. E. CHILDERS, Esq., M.P.
JOHN FLEMING, Esq.
FREDERICK HARRISON, Esq.
EDWARD HUGGINS, Esq.

WILLIAM CHAMPION JONES, Esq.
JAMES LAMING, Esq.
WILLIAM LEE, Esq., M.P.
WILLIAM NICOL, Esq., M.P.

GENERAL MANAGER.—WILLIAM McKEWAN, Esq.

Chief Inspector.—W. J. NORFOLK, Esq.

Assistant General Manager.—WILLIAM HOWARD, Esq.

Chief Accountant.—JAMES GRAY, Esq.

Inspectors of Branches.—H. J. LEMON, Esq., and C. SHERRING, Esq.

Secretary.—F. CLAPPISON, Esq.

HEAD OFFICE, 21, LOMBARD-STREET.

The LONDON AND COUNTY BANK opens—

DRAWING ACCOUNTS with Commercial Houses and Private Individuals, either upon the plan usually adopted by other Bankers, or by charging a small Commission to those persons to whom it may not be convenient to sustain an agreed Permanent Balance.

DEPOSIT ACCOUNTS.—Deposit Receipts are issued for Sums of Money placed upon these Accounts, and Interest is allowed for such periods, and at such rates, as may be agreed upon, reference being had to the state of the Money Market.

CIRCULAR NOTES and LETTERS OF CREDIT are issued, payable in the principal Cities and Towns of the Continent, in Australia, Canada, India, and China, the United States, and elsewhere.

The Agency of Foreign and Country Banks is undertaken.

The Purchase and Sale of Government and other Stocks, of English or Foreign Shares, effected, and Dividends, Annuities, &c. received for Customers of the Bank.

Great facilities are also afforded to the Customers of the Bank for the Receipt of Money from the Towns where the Company has Branches.

The Officers of the Bank are bound not to disclose the Transactions of any of its Customers.

By Order of the Directors,

WM. McKEWAN, General Manager.

At the ANNUAL MEETING of the PROPRIETORS, held on THURSDAY, the 4th February, 1864, at the LONDON TAVERN, Bishopsgate-street, the following Report for the Year ending the 31st December, 1863, was read by the Secretary.

WILLIAM NICOL, ESQ., M.P., IN THE CHAIR.

REPORT.

The Directors, in submitting to the Proprietors the Accounts of the Bank for the Half-year ending the 31st December, 1863, have much satisfaction in reporting that the Net Profit for the Six Months, after deducting all charges, amounts to 84,325*l.* 2*s.* 2*d.*, which, added to 14,343*l.* 3*s.* 4*d.* brought forward from the last Account, results in a total of 98,668*l.* 5*s.* 10*d.*

Out of this Sum the Directors recommend that the usual Dividend of 6% per Cent., together with the Bonus of 6% per Cent., be declared for the Half-year, making, with the Dividend paid in August last, 18% per Cent. for the Year. They further propose to carry 10,000/- to the Reserve Fund, making that Fund 100,000/-, leaving 16,668/- ss. 10d. to be carried forward to Profit and Loss new Account.

In consequence of the great increase of the Business of the Bank, the Directors consider it advisable further to increase the Capital of the Company, by the issue of 7500 New Shares, to be offered, *pro rata*, amongst the Proprietors, as they appeared further in the Register on the 3rd instant, the date when the Transfer Books of the Company were closed; such Shares to be issued at the price of 40*l.* each, being a premium of 20*l.* per Share. Full particulars of the Issue will be transmitted by Circular to each Proprietor.

This operation will produce 300,000£., out of which 150,000£. will be added to the Capital of the Company, and 150,000£. (being the Premium on the Shares), will be added to the Reserve Fund, raising the former to 750,000£., and the latter to 250,000£.—together One Million.

The Directors regret having to announce the decease of HENRY OVERTON, Esq., for many years one of the Auditors of the Bank. This creates a vacancy in the Auditorship, which it is in the power of the Meeting to fill up.

The Directors retiring by rotation are—

PHILIP PATTON BLYTH, Esq.,

EDWARD HUGGINS, Esq.,

and WILLIAM LEE, Esq., M.P.,

all of whom are eligible for re-election, and offer themselves accordingly.

The Dividend will be payable at the Head Office, or at any of the Branches, on and after Monday, the 15th instant.

BALANCE SHEET

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R. H. SWAINE,

London and County Bank, 28th January, 1864.

Printed by HENRY HANSARD, at his Printing Office, in Parker Street, in the Parish of St. Giles-in-the-Fields, in the County of Middlesex, and published by HENRY SWEET, of No. 3, CHANCERY LANE, and RICHARD STEVENS, of 26, BELL YARD, LINCOLN'S INN, at the OFFICE, No. 39, BELL YARD, LINCOLN'S INN.—Saturday, May 21, 1864.

The Jurist

No. 490, NEW SERIES.—Vol. X.
No. 1429, OLD SERIES.—Vol. XXVIII.

MAY 28, 1864.

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The Hon. Mr. JUSTICE WILLIAMS.

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BRODERIP, FRANCIS, Esq.
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870	4000	1438	1860	50
643	3000	1149	1860	57
2871	5000	907	1861	26
3907	5000	1180	1862	26
1751	1000	318	1862	48
309	5000	1899	1862	40

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LONDON AND COUNTY BANK.—NOTICE is hereby given, that a BRANCH of the London and County Bank was OPENED this day, at Nos. 324 and 325, HIGH HOLBORN, near to Middle-row, under the Management of Mr. L. R. SYKES.

By Order, W. MCKEWAN, General Manager.
London and County Bank, May 2, 1864.

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CHARLES JOHN GILL, Secretary.

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THE JURIST.

LONDON, MAY 28, 1864.

LORD WESTBURY seems determined to render his period of office conspicuous, by startling and sensational changes in the law. Most law reformers who have arrived at that age at which experience and acquired wisdom generally make men cautious, apply themselves to cases in which a measure of reform is by common consent admitted to be necessary or advisable, and in which there is some recognised defect to be amended. Not so Lord Westbury. He appears to have entered upon his Chancellorship with a packet of bills for altering the law in his pocket, which he introduces to the Legislature without any previous consultation with those who might be able to offer to him some useful suggestions, and certainly without taking care that the language in which his proposed measures are expressed should be intelligible to ordinary, or even to well-practised, judicial minds. As one proof of the correctness of this remark, we may mention the 194th section of the Bankruptcy Act, 1861, relating to composition deeds, the obscurities of which have puzzled and bewildered every person—judge, counsel, or layman—who has had to deal with it.

The last of his Lordship's experiments in the way of law reform is intitled "An Act for Limitation of Actions and Process for Small Debts, and to amend the Acts relating to the County Courts, and to confer on such Courts a limited Jurisdiction in Equity." In the present article we will discuss the 2nd and 3rd proposed sections of this bill. The preamble recites, "that it is desirable to limit the period within which actions for small debts may be brought, and process issued upon judgments for the same, and to amend the acts relating to the county courts, and to give to such courts a limited jurisdiction in equity." Then the 2nd section runs thus:—

"From and after the 1st day of March, 1865, no action or suit shall be brought in any court to recover any debt or money demand not exceeding 20*l.*, unless within one year after such debt or money demand, or some part thereof, becomes due and payable: provided that such time or period of one year shall not commence or run during such time as the debtor shall be absent from England, but shall commence or continue to run from his return."

We think our readers will agree with us in considering this a surprising section—surprising in the extensive change it proposes to make in the law, and in the crowd of doubts as to its construction which it suggests. In terms, the enactment is limited to *debts or money demands*, and does not include actions for unliquidated damages (which cannot be comprised in the term "money demand"). This latter class of actions is, therefore, left to the period of limitation prescribed by the present Statute of Limitations, and in this respect the Lord Chancellor's original turn of mind displays itself; for, as to most actions of tort, the 21 Jac. 1, c. 16, enacts, that the period of limita-

tion shall be *four years*, while that applicable to simple contract debts is six; but Lord Westbury's bill limits the period of suing for small debts to one year, and leaves the time within which actions of tort must be brought to be governed by the statute of James I.

Then comes the provision, "unless within one year after such debt or money demand, or *some part thereof*, became due and payable." What is the meaning of the words "or some part thereof?" In an able letter in the *Times* upon this section, written by a metropolitan county court judge, these words are discussed, and a case is put of a debt payable by instalments, running over a period of more than two years—a loan of 50*l.*, payable by quarterly instalments of 5*l.*; as soon as the first instalment is due, it is the case of a debt "part whereof has become due and payable;" so that when the sixth instalment is due, part of the debt has been due and payable more than a year, and the creditor is barred of his legal remedy for the residue. This effect cannot have been intended, and is probably only the result of carelessness, and requires alteration to make it sensible.

In the next place, it is to be observed that the enactment wholly ignores the existing law, which enables a creditor to sue within six years after any written acknowledgment by the debtor, from which a promise to pay the debt can be inferred, and also within six years after a part payment. Why, in the case of debts under 20*l.* these provisions are to be ruthlessly swept away, we do not at present understand; light may be thrown upon the subject by the discussions in Parliament, to which this bill of the Chancellor must give rise.

But we are at a loss to understand why there is such a great reduction in the number of years. In the case of debts under 20*l.*, our present social state being considered, six years may be too long a period, but one year is too short. If the object of the bill is chiefly to protect the poor, who are allowed to run into debt to the extent to which the tradesman thinks they have goods sufficient to satisfy his claim, a much smaller sum than 20*l.* would be sufficient; 5*l.*, or even less, would be large enough. An enactment limiting the period of limitation to one year for debts of this amount might induce the poor to be more thrifty and provident, and less inclined to run up debts, because they would feel that the tradesman must, in self defence, enforce payment. But why should the man who runs up debts varying from 15*l.* to 20*l.* with a number of tradesmen, without the prospect, or perhaps the intention, of paying them, be discharged in a year from all liability? The county court judge, in his able letter, has put several cases which shew the hardship and impolicy of this limitation of the debtor's liability. We trust that the Legislature will amend this proposed enactment, by inserting some middle period between one year and six years, and by extending it to all simple contract debts, preserving at the same time the saving effects of part payment and written acknowledgments, limiting, if they please, Lord Westbury's proposition to debts of a much smaller amount than 20*l.*

The next proposed enactment in Lord Westbury's bill, to which we will at present call attention, runs

thus:—"From the 1st March, 1865, no process shall issue, in respect of any judgment or order of any Court, for a sum not exceeding 20*l.*, exclusive of costs, obtained or made in any action or suit to recover any debt or money demand, but within one year, either from the date of such judgment or order, or from the time when the amount payable under such judgment or order, or the last instalment thereof, became due, or within one year from the time of the last payment made by or on behalf of the judgment debtor: provided always, that the time or period of one year shall not commence or run when, or during any such time as, the debtor shall be absent from England, but shall commence, or continue to run, from his return; and such period of one year shall be extended to two years, if it shall be found by the Court that the debtor has at any time within a year next before the date of such judgment or order, or at any time within a year from such date, made any fraudulent gift or alienation of any part of his property, or concealed property with intent to defeat or delay his creditors."

This section also is limited to judgments or orders for debts or money demands, and is, therefore, open to the same objections in this respect which we have ventured to urge against the 1st section; it does give the creditor the benefit of a part payment by the debtor, but not of a written acknowledgment; and where, under the judgment or order, the debt is payable by instalments, it provides that the year shall run from the time when the last instalment is payable. Why there are these differences between this and the previous section, we do not see. The proviso, "that the period shall be extended to two years, if the debtor has within a year before or after the date of the judgment or order made a fraudulent gift, &c., or concealment of his property with intent to delay his creditors," seems to us very useless. The object of the bill is, we believe, to protect small debtors—that class of persons who form the mass of defendants in county courts, and who have no notion of fraudulent alienations or concealments of property to defeat or delay their creditors, simply because they have no property which they can so deal with. A bedstead and a few chairs, and other actually necessary articles of furniture, compose the wordly state of the man who is the victim of the tallyman, and whose case Lord Westbury compassionated in the House of Lords. What does such a man know of fraudulent concealment? As to him, the proviso is surplusage, and as to debtors to a larger amount, we think the period of limitation too short.

As we have already stated, we consider six years too long a period in the present state of society, and that it might usefully be shortened; and probably, out of the discussions to take place upon this bill of Lord Westbury's, a measure may be framed which will be more just and suitable to the interests both of creditor and debtor.

It is high time that some restraint should be put upon the practice which seems to prevail, on the part of Government, of interfering with the sentences

passed upon prisoners by the judges, before whom they have been openly tried.

There may, no doubt, be occasionally a miscarriage of justice—extenuating circumstances may, subsequently to the trial, come to light—or even facts which may shew the perfect innocence of a person unjustly convicted.

In these cases the prerogative of mercy may righteously be exercised, but its exercise should, like a trial in open court, be upon facts clearly proved, set forth and published. If, when a man has been tried and found guilty by a jury, and sentence has been passed upon him by the judge, the sentence is set aside or modified by secret representations, or by political influence, it is evident that the administration of justice will be brought into contempt; that the criminal classes will, with less hesitation, commit offences, when they feel, that, even if convicted, they may find out a way to escape, if not with impunity, at any rate, with an amount of punishment, bearing some semblance to it.

These remarks are, we think, called for by a debate on a motion made in the House of Lords for the production of any memorial received by the Lord Lieutenant of Ireland, or the Irish Government, praying for the release of three prisoners, confined in gaol for agrarian outrages. It was alleged by the noble Lord who made the motion, that it was owing to the capricious interference of the present Lord Lieutenant of Ireland, that agrarian offences were so numerous in Ireland, for, by his meddling with the sentences passed upon prisoners, by shortening the term of imprisonment, the people had ceased to respect the law.

Another noble Lord said it was rumoured (and if such things are done secretly, it is no wonder that there are such rumours) that the person who brought the case before the Lord Lieutenant, was "one of the members of the county, and his constituents being anxious to have the men released, brought, through him, a pressure of political influence on the Lord Lieutenant."

These accusations are of the gravest character, they ought not to be lightly made, or to be lightly met. If they are capable of an answer, the answer should be full and effectual; if it fails to be so, the Lord Lieutenant will lie under an imputation deserving the severest reprobation.

The mode in which the motion was met by Lord Granville, on the part of the Government, is by no means satisfactory; he agreed to produce the memorial, and any letters of a public nature which accompanied it, but not any communications between the judges and the Government, or any confidential communications.

Such a production of documents is wholly useless in trying the question raised in the House of Lords. For of course all documents addressed to the Lord Lieutenant with the object of bringing political influence to bear upon him would be private and confidential. And if not so marked would be so considered.

But ought private and confidential letters to be received, or at any rate relied upon, for the purpose of determining whether the sentence of a prisoner should be lessened or remitted?

If a private communication affects persons engaged in the trial of the prisoners, they, at any rate, ought to be made fully acquainted with its contents, so that they might have an opportunity of shewing whether it be false, either wholly or partially, and also of meeting openly any imputations which it may throw upon their conduct or characters.

If a private communication seeks for a remission of punishment, on the ground that such lenity would increase the political influence of a particular party, it is clear that such a communication ought never to be received; or, if received, should only be answered by a severe rebuke to the person who made it.

Our own impression is, that much evil is done by the mode in which, not only in Ireland, but also in England, the sentences of judges upon prisoners is meddled with by the Government.

We believe that only in rare cases should judicial sentences be altered; and that in all cases, whatever communications are made to Government on the subject, should be filed as of record; and that a minute, also properly recorded, should state upon what evidence, and for what reasons, every judicial sentence is in any respect altered.

It would be still better if no sentence could be in any way altered, save by a properly constituted court, which would exercise jurisdiction upon purely judicial grounds, far above local feelings or political influence.

Correspondence.

THE LAND TRANSFER ACT.

TO THE EDITOR OF "THE JURIST."

THE editor of the *Times* newspaper having published a letter signed "A now Happy Landowner," containing statements in reference to this subject, which, in the opinion of several members of the legal profession, as well as myself, were quite incredible, I attempted to get some proof of them adduced, but have failed in doing so.

My suggestion to "A now Happy Landowner" to produce his bill of costs was met by the absurd proposition of printing it in the *Times* at my expense. My two last letters to the editor of the *Times* have met with no acknowledgment whatever.

I beg the favour, therefore, of your inserting the correspondence in your paper, in order that the public may judge whether the statements of "A now Happy Landowner," to which the *Times* has given currency, deserve credit or not.

I inclose my card, and am, Sir,

Your obedient servant,

A. M.

TO THE EDITOR OF "THE TIMES."

SIR,—As an instance of the practical working of the Lord Chancellor's registration of title scheme, let me state my own experience. Wanting money, and having a valuable landed estate with a complicated title, I mortgaged it for 3500*l.* The law costs exceeded 500*l.* I made a second mortgage, and had to incur again frightful costs. I determined to register my title, subject to the mortgages, and obtained a certificate of an indefeasible title, at a total cost of 50*l.*

With this certificate in my hand, and wishing to consolidate my mortgages, I borrowed 4000*l.* The legal expenses of the last mortgage do not exceed 5*l.*

Thus, in my very first transaction with a registered estate, I save more than ten times the amount of my expenses in obtaining a registered title.

I feel bound, therefore, in gratitude to Lord Westbury, to acknowledge publicly what he has done for me, and what he equally offers to other landowners.

Yours faithfully,

A NOW HAPPY LANDOWNER.

SIR,—If it be really true that your correspondent who signs himself "A now Happy Landowner," paid 500*l.* for the costs of a mortgage of his estate for 3500*l.*, it is obvious that the explanation of his having afterwards obtained a certificate of an indefeasible title at a total cost of 50*l.* lies in the fact that he had previously spent 500*l.*, or at least a very large sum, in clearing his title.

If he had gone to the Land Registry Office before he made his mortgage, would he have registered his title for 50*l.*?

I do not wish to question the utility of the Land Transfer Act. I believe it to be the germ of a new system which will be most beneficial to landowners; but it is well to know the truth, and I would suggest to your correspondent, that he should give his own name, and that of his solicitor, and that he should offer to produce the bill of costs for 500*l.*

I am, sir,

Your obedient servant,

Lincoln's-inn, May 11.

A. M.

SIR,—I do not think "A. M." should doubt my word; but although such a document would be very uninteresting to your readers, and would occupy several columns of your paper, yet if he will pay for its insertion, I will furnish the bill of costs alluded to, which he thinks should be produced, and which even now makes my head ache to think of having paid.

Practical experience has taught me, that although a heavy bill of costs may have been incurred on purchasing or mortgaging an estate, in what is called "making out and clearing up the title," yet such expense has again to be met on every similar transaction with the same property.

The fees of the Land Registry Office itself I found very small, and am satisfied that a title not circumstanced as mine was may be passed at half what it cost me.

In any future dealing with my land, look at the immense advantages of a registered title. A purchaser will not only be safe, but free from lawyers' bills. And if I want to raise money thereon, I shall not have to wait, as I had before, twelve months for the loan, while the mortgagees' solicitor was satisfying himself upon the title, but can obtain it at a few days' notice.

To quote the simile used by Lord Westbury, in his celebrated speech, "I have thrown off the old man of the sea, otherwise, the family solicitor."

In conclusion, I strongly advise every landowner to do as I have done—so far be his own lawyer as to take his deeds himself to the Land Registry Office, where he will find every possible attention and courtesy cheerfully given.

Yours faithfully,

A NOW HAPPY LANDOWNER.

SIR,—I do not wish to throw doubt upon the word of your correspondent, "A now Happy Landowner," in a way that would imply any wilful misrepresentation on his part, but I doubt whether the statements in his letter, published in your impression of the 11th

instant, or the inferences deduced from them, would be borne out on an examination of the facts.

As your correspondent has no objection to give publicity to the bill of costs, I beg him to furnish me with a copy of it, the expense of which I will pay.

I am, Sir, your obedient servant,
Lincoln's-inn, May 14. A. M.

9, New-square, Lincoln's-inn,
18th May, 1864.

Mr. A. M. presents his compliments to the editor of the *Times*, and begs to inquire whether his letter of the 14th instant, in which he requested the correspondent, writing under the signature of "A now Happy Landowner," to furnish a copy of his bill of costs, has been communicated to that gentleman.

It is the opinion of Mr. M., and of many professional gentlemen who have read the correspondence, that the statements made by "A now Happy Landowner," are incorrect, and calculated to mislead the public. Mr. M. feels confident that the editor of the *Times* will wish that any statements published in that paper should, when fairly challenged, be either proved to be correct or be retracted.

Review.

Russell on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards. Third Edition.
[Stevens, Sons, & Haynes; H. Sweet.]

THE fact that a book, the cost of which is not small, has in a few years reached a third edition, is a tolerably conclusive proof that it has met with the approbation of the Profession; indeed, we may say, without fear of contradiction, that few modern law books have been received with so much praise, and so little censure, as Mr. Russell's work on Arbitration. The practice of referring cases both at and before trial has been for several years gradually increasing, and has been fostered and promoted by statute, and until Mr. Russell's work was published, there was no work which satisfied all the requirements of those who wished to acquaint themselves with the whole subject of arbitration. The work of the late Baron Watson on the same subject had deservedly gained a high character, but it does not contain the same amount of information as Mr. Russell's book does, and cannot be considered as a book of practice on the subject. Mr. Russell states "that the principal object of his treatise is to assist an arbitrator in ascertaining what are his particular powers and relative duties, and how he may best exercise the one, and perform the other;" and accordingly he enters very fully into this branch of the law of arbitration, and gives clear directions to arbitrators what they should do; and what they should avoid doing, in the course of a reference.

The work is too bulky to allow of a minute review. Mr. Russell tells us in his Preface that no pains have been spared to render it useful, and he is fully justified in so telling us. It must have cost him great labour to compile and arrange so comprehensive a book, and to discuss so fully as he has done the various branches of the subject. We can have no doubt that this third edition will confirm and enhance the reputation which the work has already acquired.

It is not within the province of this work to treat of the main objection to arbitration, namely, the delay which so often occurs in the course of the reference, in consequence of the counsel who are attending before the arbitrator, or the arbitrator himself, being prevented from keeping appointments made, or

from making them, by a press of other business. We made some observations on this matter in our number of the 9th April (ante, p. 124), and ventured to suggest the expediency of a court of arbitrators, among whom causes referred would be allotted, and before whom counsel must attend, as they must at Nisi Prius or in Banc, when their case is called on. This is a plan which we have frequently heard mooted, and which deserves consideration. The amount of business referred is now so very large, and delay is so often a serious evil to the parties, that any plan which secures expedition deserves to be well considered.

SITTINGS IN EXCHEQUER CHAMBER.

The Right Hon. Sir William Erle, C. J., Bramwell, B., and Crompton, J., have appointed the following days for sittings in error:—

QUEEN'S BENCH.

Tuesday June 14 | Wednesday June 15
Thursday June 16.

COMMON PLEAS.

Friday June 17 | Saturday June 18

EXCHEQUER.

Monday June 20 | Tuesday June 21

Wednesday, June 22, and following days, for errors from the Queen's Bench, if a Court can be made.

Imperial Parliament.

HOUSE OF LORDS.—Monday, May 23.

Lord Brougham, on the motion for the second reading of the County Courts Acts Amendment Bill, said he found that sixty county court judges were against that part of the bill which proposed to interfere with the right of imprisonment. He found that there were 900,000 suits in the course of the year instituted in the county courts; out of these there were not above 9000 judgment summonses, or in the proportion of 1 per cent.; and of the 9000 judgment summonses, which were not committals, but only involved the possibility to commit for debt, a very small proportion were committals. This was a smaller proportion than in the superior courts of the Queen's Bench, the Court of Common Pleas, and the Exchequer, in which there were 8 in 100. There were some parts of the bill of which he approved, and especially that which gave an equitable jurisdiction. Another part of the bill proposed to shorten the period of limitation for the recovery of debts to one year. Now, while he thought the present period too long, he looked upon one year as too short, and would recommend the period for the recovery of debts to be fixed at two years. At present, the summonses of the county courts were issued as a matter of course, and there ought to be some check to this power. Upon the whole, he approved of the principle of the bill.

Lord St. Leonards regretted that he could not support the bill as it at present stood. He objected to the reduction of the time within which an action could be brought for the recovery of a simple contract debt to one year. As the law now stood, if a debtor acknowledged a debt to be due, or paid part of his debt, he was liable to be sued for six years after the date of this acknowledgment; but if the bill of his noble and learned friend passed, in no court could there be a recovery of a simple contract debt beyond one year. At present, the labourer could go to the grocer or baker with whom he was in the habit of dealing, and could get goods on credit, for the small shopkeeper found, that if he did not trust him in winter, he could not gain his custom in summer; and the small shopkeeper depended on the labourer. With this bill, the credit of the working man would be destroyed. Again: the sympathies of their Lordships ought not to be solely with the debtor; the creditor was also entitled to his share. The small shopkeeper, with a small ca-

pital, ought to have the power of enforcing his demands. The amount of debts represented by the 900,000 plaints which were issued out of these courts represented a large sum of money. There ought not to be repeated committals for the same debt. The judge ascertained whether the debtor could pay by instalments, and made an order requiring him to pay the instalments under the penalty of commitment, and there was no reason why this power was not to be continued. There was one portion of this bill which, when it became known, would certainly excite general opposition, and that was, that the judge should have power to make an order, that the employer of a debtor should be directed to appropriate certain instalments of the debtor's earnings, and to pay them to the high bailiff in liquidation of the debt. Suppose that there were a million of suits throughout England, and that, in a large proportion of them, orders of this kind were made upon employers. At a public meeting, a manufacturer had recently stated, that he employed 2500 persons; and such a person would be so constantly served with orders to appropriate portions of his workmen's wages, that it would be almost impossible for him to carry on his business. But if this clause were struck out, and the remainder of it passed, there would be no means of compelling a labouring man to pay his debts. He thought that it would be most objectionable to transfer to the county courts the powers of the courts of equity, and indeed, that a greater curse could not be inflicted upon the country. When a man possessed of small property died, the course was now for the parties interested to come to some arrangement, and dispose of their claims amicably; but if this bill passed, each such case would give rise to an equitable suit in the county court, and the whole country would soon be overrun with litigation. Beyond this, power of appeal was given from these new equity courts to the original court of equity. For the reasons which he had stated, he thought that there were many objections to the measure which was then before their Lordships.

Lord Chelmsford observed, that his noble and learned friend must forgive him for saying, that in the able speech with which he introduced the bill he only permitted their Lordships to see one side of the case. He could not help admiring the address with which his noble and learned friend had described the misery to which an unhappy debtor was exposed to under the system of imprisonment for debt. It was absolutely necessary, however, that their Lordships should have pointed out to them the difference between commitment by the county court judges and the old law of imprisonment for debt. The two things were totally distinct. Imprisonment for debt was the act of the creditor for the satisfaction of his debt. The power of commitment was an act of the judge for the disobedience of his orders. Imprisonment for debt took place whether the debtor had the means of paying or not. The power of commitment was only exercised when the debtor *had the ability, but refused to pay*. The power of imprisonment was for an indefinite period, but the power of commitment was for a limited time. His noble and learned friend had stated the number of commitments for two years, ending December, 1863, as being no less than 17,797, and had calculated that the sums spent by those persons in prison amounted to 253,854*l*. His noble and learned friend had assumed that on the average those persons earned 3*s*. a day, and that if the number imprisoned was multiplied by three it would give a sum of 43,434*l*. as the value of the labour lost to the country, in order to obtain payment of 92,488*l*. But the fallacy was in assuming that those prisoners were persons of the working class at full work, at 3*s*. a day. From all he could learn, a man in full work was seldom sent to prison. The debtor class was almost as easily distinguished as the criminal class, and this power of commitment generally fell, not on the honest hardworking man, but on the profligate and idle—on the man who worked only three days a week, and was a drunkard for the remainder. It had been stated, that in one year 900,000 plaints had been issued, representing a sum of upwards of 2,000,000*l*., and it appeared that of those more than a half had been settled before judgment. There had been about 400,000 judgments issued, representing nearly 1,000,000*l*., and one-third of the judgments had been settled without a commitment. With regard to the small proportion of commitments to the number of plaints brought into court, the opinion of one of the judges was, that the proportion of defendants actually imprisoned in

proportion to those sued was not more than 1.25 per cent. His noble and learned friend had referred to the number of times persons had been recommitted for the same cause, and he had spoken of a case in which a person had been committed fifty times. He wished to ask his noble and learned friend whether he knew of any instance of a person having been committed, not fifty, but five times, for the same cause? It appeared from a statement of one of the judges, that out of 316 cases, only three had been committed a second time; and another judge stated, that out of 4425 commitments only 300 were for a second time. He did not think the noble and learned Lord had done justice to the county court judges. The answers of those learned persons were not strained in accordance with the powers given to them with respect to imprisonment. The noble and learned Lord (the Lord Chancellor) said, that the object of this bill was to prevent the present mischievous and dangerous facility to contract debt given to the labouring classes. He (Lord Chelmsford) certainly thought the two illustrations given by his noble and learned friend of his position most inapplicable; for surely no county court judge would commit a father for a debt contracted by a daughter without his authority. No county court judge would commit a husband for a debt contracted by a wife for useless finery. It was proposed by the bill to reduce the limitation of time within which actions under 20*l*. could be brought. Now, he confessed he could not see the necessity for drawing a distinction as to sums, although he admitted that the general term might be curtailed. Large and small were but relative terms, and what was a small debt to one man would be a large one to another. He could see no reason why the proposed distinction should be made. This short limitation of time would be very mischievous in many cases. Take the case of the medical man, who commonly sent in his accounts only once in twelve months. And there were many other similar cases. His noble and learned friend proposed to take away the concurrent jurisdiction of the superior courts for debts under 20*l*. No doubt, it was desirable to limit the costs of actions under 20*l*., but there were many manufacturers and small tradesmen who hitherto had been enabled to sue out a writ in a superior court, and generally the issue of that writ was sufficient to obtain the debt. This clause, however, would deprive them of that remedy. The effect of this measure would, indeed, be to stop credit altogether in this branch of business, because it would be impossible for the small manufacturers to give their usual credit if this bill were in operation. He would suggest to his noble and learned friend to withdraw all those clauses which related to imprisonment under the jurisdiction of the county courts.

Lord Lyveden said, the bill would be of incalculable benefit to the poorer classes of the community, and, indeed, to society at large.

Lord Cranworth said, the existence of the county courts, as at present constituted, had created a vicious system of credit amongst the poorer classes. The proposed change would lead to a wholesome state of things. Indeed, he would like to see all small debts placed upon the same footing as debts of honour. He should certainly support the second reading of this bill.

The Lord Chancellor expressed his regret that the discussion of so important a measure as this should have secured so small an attendance of their Lordships as he then saw present [there were eight peers present.] The opponents of this bill seemed to take three things for granted. The first was, that it was good and expedient that there should be for the poor man the same facility of credit which he now obtained. Now, that credit was a constant temptation to the labourer to live beyond his means. The second proposition that was assumed was, that the creditor had a moral right to imprison his debtor, but he (the Lord Chancellor) denied that in toto. The third assumption, which he denied, was that the poor debtor ought to be placed upon a different footing from the man who owed 500*l*. or a 1000*l*. Under the existing law the future property of the rich man was not held liable for the payment of his debts, but the future earnings of the poor man were subject to that liability. It might be a fair question whether the limitation for the recovery of debts should be for one year or for two years; but that and all other details of the measure could be best considered by their Lordships in committee.

The Earl of Derby said that the noble and learned Lord

treated the present law as one which encouraged the granting of reckless credit. But imprisonment was inflicted in those cases only in which the debtor could pay his debt, and in which it could not, therefore, be considered that the credit had been improperly given. The imprisonment had naturally the effect of inducing people to meet their liabilities, and he saw no reason why that arrangement should not be continued. The noble and learned Lord would take away the only means of compelling the debtor to meet his just engagements when it was in his power to do so. One of the clauses of the bill would enable the creditor to attach the wages of the debtor, but the probable consequence of such a provision would be, that in many cases the employer would refuse to incur the trouble which such an arrangement would impose upon him, and would dismiss the debtor from his service.

Lord *Wensleydale* said he could not think it would be desirable to abolish imprisonment in the case of a man who had the means of paying his debts, and refused to fulfil that duty.

The bill was then read a second time.

The Under-secretaries' Indemnity Bill was read a third time, and passed.

The Common-law Procedure (Ireland) Act (1853) Amendment Bill was also read a third time, and passed.

HOUSE OF COMMONS.—Thursday, May 19.

Sir *G. Grey*, in reply to Sir *L. Palk*, said that the Church Building Acts Bill would not be brought forward before the 26th inst.

The remaining clauses of the Unions Assessment Committee Amendment Bill were agreed to.

The House went into committee on the Railway Companies Powers Bill, pro forma.

The House also went into committee on the Railways Construction Facilities Bill, pro forma.

The Summary Procedure (Scotland) Bill was read a third time, and passed.

The Admiralty Lands and Works Bill was read a third time, and passed.

The Limited Penalties Bill was read a second time.

Mr. *Dodson* moved for leave to bring in a bill to amend the registration of county voters.

The motion was agreed to.

Sir *G. Grey* brought in a bill to amend the Act for the better Management of the Highways in England, which was read a first time.

Friday, May 20.

Mr. *Brand* moved for the issue of a new writ for Gloucester, in the room of Mr. *J. J. Powell*, who, since his election, has accepted the recordership of Wolverhampton.

Monday, May 23.

In reply to Mr. *A. Mills*,

The Attorney-General said—The bill relating to the New Law Courts was not abandoned for this session, but it was not in his power to fix the day upon which he would submit the matter to the House.

The Attorney-General for Ireland, on the request of Mr. *Whiteside*, postponed the second reading of the Court of Chancery (Ireland) Bill.

The Limited Penalties Bill passed through committee.

The Chief Rents (Ireland) Bill, after certain resolutions relative to stamps were agreed to, and embodied therein, passed through committee.

On the motion of Sir *John Hay*, leave was given to bring in a bill to authorise the Governor and Company of the Bank of England to issue their notes in Scotland, and to make them legal tender there.

The Chancellor of the Exchequer, in committee of the whole House, moved the following resolution:—"That it is expedient to enable certain banking copartnerships, which shall discontinue the issue of their own bank-notes, to sue and be sued by their public officer." The right hon. gentleman stated that the National and Provincial Bank were prepared to surrender their issue of notes, and to remove their banking-house to London. They were advised that if they did so they might lose the privilege of suing and being sued by their public officer. Now, this was clearly not the object o

the act of 1844, and it was contrary to public policy. The aim of the present bill was to remedy that technical defect. The resolution was then agreed to.

REPORTS AND PARLIAMENTARY PAPERS.

THE Twenty-ninth Report of the Inspectors appointed under the provisions of the act 5 & 6 Will. 4, c. 38, to visit the prisons of Great Britain, presented to both Houses of Parliament, by command of her Majesty, has just been printed, viz. No. 1, Southern District; No. 2, Northern District. They contain much interesting matter.

In Report, No. 1, it is stated, that while the Report was in press, a question had arisen in one of the prisons, as to whether prisoners under sentence of penal servitude can be legally required to perform hard labour during their stay in the prison. "As this is not the first time by many," says the inspector, "that the same difficulty has been raised by that class of prisoners, it may be useful to state, for the information of those who may be in doubt on the subject, that the stat. 5 Geo. 4, c. 84, s. 18, provides that they may be so employed, if one or more of the visiting justices shall give a written order to that effect" (P. 18).

The following incident, the inspector says, deserves to be recorded, as a caution against forming the floors of refractory cells of stone or brick, which can be readily raised:—"Thomas S., being under punishment in a refractory cell, barricaded himself, by taking up the pavement and putting it against the door. In this position it was, of course, impossible to get him out; and as he had refused all food or water from Friday night till Sunday afternoon, it was necessary to employ some means for his removal, lest he should be starved to death.

"In the afternoon of Sunday he asked for some water, and having put his hand out of the trap to take it, his arm was seized by the warders outside, and he was forcibly drawn through the trap-door, which measures only one foot by fourteen inches. As the prisoner was a well-grown man, the account of his extrication would have appeared incredible, but for the concurrent testimony of all concerned. To avoid such an occurrence for the future, the floors of the refractory cells have been taken up, and replaced by three-inch planks, which it will be impossible to remove." (Id., p. 33).

Again: "The Glamorgan Discharged Prisoners Aid Society, which has been referred to in a former Report, appears to be producing good results, by assisting deserving prisoners to get into employment; and there is no reason to think that the apprehensions expressed by some gentlemen, that it was likely to tend to the increase of crime, by permanently establishing a dangerous class in the county (Glamorgan), will be verified. The society is very economically worked, and I learned from Mr. Fowler, who, besides being the founder of the society, has watched its operations with great care, that he is satisfied beyond all doubt, that it has done much good, and is not aware that it has done any harm. With reference to the objections

alluded to above, that the society has a tendency to fix a criminal population in the neighbourhood, which would otherwise disperse itself more widely, Mr. Fowler remarks, 'The itinerant rogue rarely accepts our assistance, which is almost entirely limited to persons more or less connected with South Wales, and for the most part with Glamorganshire.' (Id., p. 33).

The inspector, with reference to the Clerkenwell County House of Detention, regrets the "great amount of juvenile crime still existing on the Middlesex side of the Thames (exclusively of the city of London), notwithstanding the benevolent endeavours made of late years to repress it by reformatories and industrial schools." (Id., p. 47). He says, "that 148 boys in 1862, and 101 in 1863, have been in that prison, many several times." He adds—"The county of Middlesex possesses an industrial school at Feltham, which was established under stat. 17 & 18 Vict. c. 169, and numbers at present 568 inmates; but although this school resembles in its objects, and in many of its features, the reformatory schools certified under stat. 17 & 18 Vict. c. 86, it is characterised by two essential peculiarities, namely, that the ages of the inmates on their reception are required to be above seven, and under fourteen, years; and that the boys are received directly from the courts, and therefore do not undergo the preliminary imprisonment required by the act last cited." (Id., p. 48).

Roman Catholic priests have manifested of late years a very natural wish to attend to the spiritual interests of those of their community confined in gaols. In reporting respecting the prisons in Surrey, the inspector says, that he "felt it to be his duty, some months since, to call the attention of the Secretary of State to a rule of the prison which required the governor to supply the Roman Catholic prisoners with the Protestant version of the Bible, even though such prisoners might be attended by ministers of their own religion, and supplied by them with Douai Bibles. The rule, however, has been now so far modified as not to require that Protestant Bibles should be furnished to Roman Catholic prisoners, *except at their own request.*"

It seems that the Prison Ministers Act, 1863, has not been acted upon to its full extent, but the visiting justices have awarded a Roman Catholic priest 60*l.* a year for attending Roman Catholic prisoners at the House of Correction. The inspector complains that "collective worship by Roman Catholic prisoners is impossible under the present circumstances, as there is no large room which could be set aside for the celebration of mass, and it has not been formally proposed to lend the chapel for that purpose." (Id., p. 78).

If a separate chapel is to be built for the accommodation of the Roman Catholic prisoners, it seems difficult to see why Protestant Dissenters may not set up a similar claim.

In the Report, No. 2, Northern District, the inspector says, that "it has been attempted in Edinburgh to check 'the social evil' by imprisonment, and a large number of females have been committed for 'importuning.' If such a hopeless experiment is to be continued, suitable accommodation, at least, should be

provided, and care should be taken that the inmates are not exposed to the evil influences inseparable from associations in a prison." (Id., p. 86).

With reference to the exercise of their jurisdiction by the magisterial authorities at Edinburgh, we should like to be informed whether their practice of committing for importuning is confined, as we may infer from the Report, to "females;" if it is so, their conduct is unjust, as well as injudicious.

Importunity, they must be well aware, is not confined to the female sex, and if it be a proper subject for punishment, males as well as females, who may be guilty of the offence, should be equally and impartially punished for it.

A return has just been made to an order of the House of Lords, dated the 3rd May, 1864, containing a copy of the Report of Sir R. Bromley on the Greenwich Hospital, with the papers connected therewith.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

A MEETING of the department of jurisprudence and amendment of the law was held on Monday, at 3, Waterloo-place, to consider Mr. Hastings's paper, proposing a new court of ecclesiastical jurisdiction. Lord Brougham occupied the chair. A letter was read from Mr. George Hadfield, M. P., calling attention to a bill now before a select committee of the House of Commons, on the subject of the law of judgments, and inviting the assistance of the Society to give evidence before the committee. The County Courts Amendment Bill was referred to the standing committee to report upon it to the next meeting.

The discussion on Mr. Hastings's paper was resumed, Mr. Hastings giving a brief summary as to its effect, namely, that in a short time there would be neither competent judges nor a bar to conduct the business of the Ecclesiastical Courts. He proposed the establishment of her Majesty's Court of Arches to include the Probate and Divorce Courts, the Admiralty Court, the Court of Arches, Consistorial Courts, &c.

Mr. Stewart wished to call attention to the position in which the clergy would stand on such a change. He thought it would be desirable to make them friendly. The ecclesiastical element should to some extent enter into the new organisation. One thing ought to be provided for in matters of doctrine, that the court should be assisted by the two archbishops.

Sir Eardley Wilmot concurred in the views put forward by Mr. Stewart, and thought the ecclesiastical element ought to be considered and included. He thought the creation of the new court would relieve the present judges from labours with which they were now inconvenienced, but he objected to the abolition of the local courts as courts of the first instance.

Mr. Allen said—On fiscal grounds, too, he thought the appointment of two new judges was rather an expensive process, but he admitted that some relief should be afforded to the judge of the Probate and Divorce Court.

Mr. Lefevre was of opinion that the small country courts should be concentrated. He also objected to the interference of the clergy in legal matters, and would not permit, if he could help it, the presence of the bishops in the Privy Council.

Mr. T. Chambers said ecclesiastical courts only existed in England on account of Church and State. A

charge of indecency ought to be tried by a jury, and in questions of doctrine he would exclude the clergy, and leave it to the lawyers to decide, for it was for the laity to decide what was sound doctrine. He would rather trust for true doctrine to lawyers than to clergymen, who were themselves always running into error, and the construction of doctrine was as much the work of a lawyer as the construction of an act of Parliament. If they were to have Ecclesiastical Courts at all, he did not think they could have a better scheme than that submitted by Mr. Hastings.

In reply to a question from Mr. Lefevre,

The Chairman stated that all members of the Privy Council had a right to attend the sittings and hear any cases that came before it.

Mr. Webster looked upon the abolition of the primary jurisdiction of the bishops as a revolutionary act, and that was the real question raised by Mr. Hastings's paper. They must regard the feelings of the Church, which consisted both of laity and clergy, and if Parliament were to make any measure agreeable to the Church it must introduce the ecclesiastical element into the courts entertaining the first proceedings. To place questions of doctrine in the hands of the laity would lead almost to the great question of the severance of Church and State. He believed that it would create such an amount of discontent amongst the clergy in the present relation to the State, that a large portion of them would be disposed to support the principles of the Dissenters, and secede from the State altogether. That was really a question of very grave importance. It appeared to him the greatest security for religious liberty was the union of Church and State. There was a disposition in all sacerdotal bodies, whether Asiatic or European, to set themselves up against all temporal authority, and unless they kept them by law in connexion with the temporal authority they were really raising up a sort of imperium in imperio, which tended directly to weaken the general conditions of the State. He thought it would not be satisfactory to the religious people of the country if the ecclesiastical element were entirely set aside in courts of the first instance. When questions of pure religious doctrine arose, it would be well to have a bishop or a distinguished ecclesiastic sit, if not as a judge, as an assessor in the first instance.

After some further conversation, Mr. Hastings replied, and his paper was referred to the standing committee of the Society.

The meeting then adjourned.

Legal Education.

OXFORD, May 24.—In a congregation held this day, a new Vinerian Statute was promulgated.

Professor Bernard suggested, that if any objections were felt to the proposed Vinerian Statute, they should be expressed, in order that those who had framed the statute might answer them.

Mr. Neale, of Oriel, thought that the statute had too wide a scope. The time must soon come when the whole of the arrangements with respect to the law studies would have to be revised. Till that time came, he thought it would have been best to confine attention to the scholarships. It was proposed to establish two scholarships of 80*l.* each, to last two years. He would have preferred two scholarships each year, of the value of 60*l.*, to last four years. Still he regarded the proposed statute as a useful measure.

Mr. Pottinger, of Worcester, opposed the statute. He thought it did not meet the real want of the time, which was for tutorial instruction in the subjects

taken in by students in the law and modern history school. Lectures were wanted twice a day, rather than twice a week.

Mr. Freeman, of Trinity, as an examiner in the law and modern history school, gave thanks for a small modicum of relief.

Professor Bernard remarked, that the statute had only one opponent. He differed from him in regarding professional instruction in the law as more important at the present time than the tutorial. Scientific teaching of the law was the great want of the day. The statute must not be considered as final, but as provisional. He would be very glad if such scholarships as Mr. Neale suggested could be established, but the whole Vinerian fund was only 540*l.* a year, and Mr. Neale's suggestion would absorb on the scholarships 480*l.* He thought it more important to provide a teacher than to apply the fund in the way suggested. Mr. Viner's will shewed that his chief wish was to provide a teacher.

Professor Connington objected to the appointment of the teacher by convocation. If it required an act of Parliament to alter the appointment, such an act should be applied for.

In a future convocation, the name of Mr. Montague Bernard, B. C. L., of All Souls' College, who has been nominated to the office of examiner in civil law, was to be submitted to the house.

Appointments.

THE HON. T. P. NORMAN has been appointed to officiate as Chief Justice of the High Court of Judicature at Fort William, in Bengal, during the absence of the Hon. Sir B. Peacock, or until further orders.

Mr. A. T. Peterson, barrister-at-law, has been appointed to officiate, until further orders, as a Judge of the High Court of Judicature at Fort William, in Bengal.

THE VACANT INDIAN JUDGESHIP.—The vacancy in the Supreme Court, Calcutta, caused by the death of Mr. Henry Mills, Q. C., has been filled by the appointment of Mr. John Budd Phear, M. A., of the Norfolk Circuit. Mr. Phear, who was called to the Bar by the Society of the Inner Temple in January, 1854, graduated from Pembroke College, Cambridge, in 1847, when he came out sixth wrangler. He was immediately elected Fellow and Mathematical Lecturer at Clare College, of which he is now Senior Fellow. He was also Senior Moderator for the year 1856, and afterwards University Examiner for the Law Tripos.

J. J. POWELL, Esq., Q. C., has accepted the Recorder-ship of Wolverhampton.

JAN. 24.—The Lord Chancellor has appointed Henry Stringer, of New Romney, in the county of Kent, Gentleman, to be a Commissioner to administer oaths in the High Court of Chancery in England.

MAY 7.—The Lord Chancellor has appointed Frederick Merryweather Burton, of Gainsborough, in the county of Lincoln, Gentleman, to be a Commissioner to administer oaths in the High Court of Chancery in England.

THE LAW ASSOCIATION.—The forty-sixth annual meeting of this institution, established for the benefit of the widows and families of professional men in the metropolis and vicinity, was held at the hall of the Incorporated Law Society, Chancery-lane, on Thursday, the 12th instant, when Lawrence Desborough,

Esq., one of the treasurers, presided. Amongst those present were:—Messrs. A. G. Harding, E. Tylee, W. J. Whyte, R. N. Bennett, A. B. Carpenter, G. L. P. Eyre, E. W. Field, G. Helder, T. J. Jerwood, W. C. Hall, T. D. Keighley, and S. Williams. The secretary, Mr. Boodle, read the report and financial statement, which were adopted. They showed that the annual subscriptions had been 613*l.* 4*s.*, and the dividends on stock 702*l.* 14*s.*; that during the past year twenty-nine cases of the primary class had been relieved by the distribution among them of 1105*l.*, and that twenty-two cases of the secondary class had received the sum of 150*l.* The report announced that the present capital of the society amounted to 23,512*l.* 4*s.*, 3*l.* per Cent. Bank Annuities, and that a further sum of 7603*l.* had been lately contributed by members of the association thereto. Lord Cranworth was unanimously elected president in the place of Lord Lyndhurst, deceased, and Mr. Charles Kaye Freshfield was chosen a trustee to supply the vacancy occasioned by the retirement of his father, James William Freshfield, Esq. After the re-election of vice-presidents, treasurers, and other officers, thanks were voted to those of the past year as well as to the chairman of the day, and the proceedings terminated.

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THE JURIST.

LONDON, JUNE 4, 1864.

THE consolidation of the copyright laws is, no doubt, a very desirable object; but, considering the recent legislation on part of the subject, sufficient time has been scarcely as yet allowed to ascertain the true principles on which consolidation should be suffered to proceed, particularly as regards registration. A bill has, however, been introduced into Parliament, with the high sounding title of "A Bill to consolidate and amend the Acts relating to Copyright in Works of Literature and the Fine Arts;" and this first attempt to combine and harmonise the numerous existing statutes in the wide field of literary and artistic copyright has certainly been packed into a very small compass. Nevertheless, when we call to mind certain abortive bills of 1857 and 1861, and contrast the promise of this bill with its performance, and investigate its history, its chances of success in a lethargic and moribund Parliament appear so slight, that it would hardly be worth while to discuss its provisions in these pages, were it not for the fact, that the measure has been referred to a select committee, which has already commenced its labours; and it may, therefore, be useful to publish our impressions of this draft bill. Its framers seem better versed in the law of literary than in that of artistic copyright, and have created some confusion by subordinating the latter to the former in various parts of the machinery of the act. But the blots in the law of literary copyright seem for the most part to have been fairly hit, and our remarks will be chiefly directed to the measure as far as it relates to artistic copyright. Our first complaint against the bill in this respect is, that it is not so comprehensive in its scope as it ought to be. According to its interpretation clause, "Works of art shall include articles of sculpture, models, paintings, engravings, drawings, prints, and photographs, or any means by which the representation of objects may be given." Bronzes, workings in ivory, and the precious metals, would hardly come within the definition, and yet, considering the number of these articles "de luxe" in the market, and the immense sums annually expended in their production by skilled artists and designers, it would be difficult to justify their omission. It seems, moreover, to have been forgotten, that the registration of sculptures, models, and casts has been already provided for under the Registration of Designs Acts; and these latter acts are not mentioned in this bill, or its schedule. Perhaps this inadvertence is intentional. Literary works have been hitherto registered at Stationers Hall, whilst designs, sculptures, and models have been registered at Whitehall; but in 1862 the registration of paintings, drawings, and photographs was, in spite of considerable opposition, and certainly with strange incongruity, directed to take place at Stationers Hall, and it is now indirectly sought by this bill to carry the registration of sculptures, models, and casts thither also. We trust that the

committee, after hearing evidence as to the efficiency and economy of these two systems of registration will decide against Stationers Hall. The next great defect in this bill is, that the rights of employers of artists are not properly or not adequately recognised. The 8th section does, indeed, provide, that "when any sculpture, model, or cast, or any painting or drawing, or the negative of any photograph" (primary positives are ignored throughout the bill), "shall be sold or disposed of, or shall be made or executed for or on behalf of any other person for a good or valuable consideration, the author or artist thereof shall not produce copies, or engravings or photographs of the same, unless he have leave to do so, by an agreement in writing, signed by the proprietor of such work of art." But this section, while it does not touch replicas (as repetitions of pictures or works of art are called, and which, in artistic language and circles are not copies, as Miss Burdett Coutts and others have found to their cost), nor extend to copies or engravings made before the sale, does not accord any copyright to the purchasers or employers; but that is left in abeyance. The registration should be managed so as to provide for the case of the publication of engravings from a picture yet unsold, and all the existing rights (including copyright and the right of producing replicas) of the producer should pass by the sale of the work of art, unless expressly reserved in writing. The statute of 1862, by its awkwardly worded 1st section seems to intend that in every case of a sale of, or the execution of an order for, any work of art, some writing shall be required to pass the copyright; but it is surely simpler to make such a case an exception to the general rule, and at the same time to preserve the rights of the public, by requiring from the purchaser or employer registration of proprietorship, in order to perfect his copyright.

While we are on this point we may remark, that the next question of the necessity of attestation to licenses or assignments should not again be left open. Of course, also, the definitions of "assigns" and "authors" will need to be amended; and we are not satisfied that "dramatic piece" comprises the various mixed entertainments given at our music and other public halls and galleries. The "concurrence and request" required by sect. 20, for the registration of an assignment, seems altogether a vexatious and useless form; the production of the assignment with the assignor's name to it ought to be sufficient, as in other assignments; for if his name may be forged to the one, so it may be to the other. The 22nd section is extremely vague; and at any rate it would be for the interest of the registrar to learn how many sums of 20l. he is to forfeit in the day or the hour. The 28th section is open to the same objection; the nature of the authorisation is not sufficiently specified, and the provision for costs, as between attorney and client, must have been inserted in forgetfulness of the 5 & 6 Vict. c. 97, s. 6. And in the 33rd section it seems to have been thought impossible for the party summoned to be in the right; or, at any rate, if he should be so, there is no provision for giving him the costs of his successful opposition; and

he may, therefore, be annoyed in this way over and over again, with perfect impunity to his assailant.

Again: in the limitation of actions clause (the 38th), the period of limitation ought to commence with the discovery, and not the commission, of the offence. In our opinion this ought to be the rule in every case of tort or wrong-doing; but where the field of operation of an act is so extensive, and the offence may so easily be concealed, and the time of limitation is so short, the proposed emendation can scarcely be seriously resisted. By the 29th and 30th sections, notice of copyright in any book first printed and published in the British dominions, or in any foreign country to which the privilege of copyright is extended, and of any work of art registered under the act, MAY be given to the Commissioners of Customs, who shall then publish lists of the proprietors of these copyrights at the home custom-houses, and in such foreign ports and places as the Board of Trade may determine. Pirated copies of works inserted in these lists are prohibited under a penalty, and custom-house officers are authorised to detain any package suspected to contain such pirated copies. The lists are to be revised every seven years, and annual notices as to their contents have to be sent by the proprietors to the commissioners. Why all these provisions should have been inserted except in ease of the custom-house authorities, or rather of piracy, it is not easy to conjecture. By the 16 & 17 Vict. c. 107, s. 160, similar notices of copyright were compulsory, not permissive; and as under both statutes the prohibition and detention would extend only to the contents of the lists, the result would be, that where notice had not been given, reprints or fraudulent copies might be imported without any hindrance.

If foreign piracy is really sought to be prevented by means of custom-house restrictions, notice of copyright to the Commissioners of Customs must continue to be compulsory. Under the mention of the 16 & 17 Vict. c. 107, s. 160, another literary grievance crops up, for which no redress is afforded by this bill. That section preserved to the Queen in Council the powers conferred by the 10 & 11 Vict. c. 95, of suspending in certain cases the prohibitions against the admission of pirated books into the colonies; and those powers have been abused to a considerable extent. It would take up too much space here to enter fully into the matter, but it may be enough to state that foreign booksellers and publishers, amongst whom the Americans are conspicuously the chief offenders, inundate our colonies with cheap reprints of English books, and that the owners of the copyright in those books are practically without redress. If, in the revision of our copyright laws, the punishment or prevention of foreign piracy should prove to be impracticable, it would at least be possible to prevent the pirates running the same riot in our colonies as heretofore.

Sect. 40 in this bill is a mere re-enactment of the 10 & 11 Vict. c. 95.

It is a more grateful task to observe the instances in which this bill has met the admitted short-comings of the existing law. Copyright in illustrations of works of literature, in lectures, in sermons, in dramatic pieces, and musical compositions, is settled on a

more secure basis, and the right of the author of a work of fiction to dramatise the whole or any part of his conceptions is fully recognised. The provision, that international copyright shall not cease between this country and any other with whom it may be at war, is a graceful indication on our part of good intentions, but will be of little avail unless followed up by a corresponding law of the foreign country. The penalties seem mild, and the 8th and 9th sections, pointing out the manner of recovery of penalties, seem to have been accidentally omitted. Altogether, if the select committee will take only ordinary trouble with this bill, they will hardly fail to produce a measure that may satisfactorily pass into law in some future session, although it can scarcely be expected to attain maturity this year.

WE rejoice to see, that in the case of *Reg. v. Samuel Porter* (10 Jur., N. S., part 1, p. 547), the Court of Criminal Appeal has been able to arrive at a decision, brushing away a technical objection, which might have prevented the punishment of a person, whose misconduct richly deserved it.

The case against Samuel Porter, who was convicted at the last Cornwall Assizes for having wilfully neglected his brother, a lunatic, whom he had taken into his care, must be fresh in the memory of all who read the disgusting details of the ill-treatment and neglect of that unfortunate man.

The counsel, however, for the prisoner, objected that the case was not within the 9th section of the 16 & 17 Vict. c. 96, under which the indictment was framed, as that section did not apply to the care and charge taken by a man of his brother, a lunatic, in his own private house, but only to persons having the care of lunatics in registered hospitals or licensed houses.

The Court, however, were unanimously of opinion, that notwithstanding the relationship between himself and the lunatic, the defendant was a person "having the care or charge of a lunatic," within the meaning of the statute, and, therefore, might be convicted of the misdemeanour.

This decision renders it unnecessary to legislate further to meet the offence of which the defendant was guilty.

It is to be hoped, that the disclosures which took place in this case, will make the visitors of lunatics more vigilant, and that it will cause all persons to feel, when they have good reason to suppose a lunatic is ill-treated, either by his relations or others, that it is their bounden duty at once to communicate the facts to the proper authorities.

ALTHOUGH that part of the Lord Chancellor's County Courts Act Amendment Bill which gives equity jurisdiction to the county courts has been blamed, as being likely to give rise to much litigation, we certainly think that it is not open to those objections raised to the other parts of the bill, which can only be cured by almost total omission, or alterations so extensive as to change almost entirely the principle upon which those parts of the bill proceed.

If, however, we grant, as we presume even Lord St. Leonards would do, that most of the rules acted upon by our courts of equity, as contradistinguished from the rules of law, as administered by the courts of common law at Westminster, are founded upon principles of justice, and that much wrong would be done if strict law could not be modified by the interposition of courts of equity, it follows, that in order to meet a vast number of cases where the assistance of courts of equity, as at present constituted, cannot be invoked without great oppression, in consequence of the enormous costs which would necessarily be incurred, in proportion to the subject-matter of litigation, some other tribunals should be created, where the principles of equity, admitted to be beneficial in great cases, should be cheaply administered where the property or matter in dispute is of small value.

Lord St. Leonards, indeed, in his speech in the House of Lords, went so far as to say, that he thought it would be most objectionable to transfer to the county courts the powers of courts of equity, and "that a greater curse could not be inflicted upon the country."

As an illustration of his meaning, his Lordship says, "that when a man possessed of small property died, the course was now, for the parties interested to come to some arrangement, and dispose of their claims amicably; whereas, if this bill passed, each such case would give rise to an equitable suit in the county court, and the whole country would soon be overrun with litigation."

Unfortunately, his Lordship is not quite correct in his statement, for it too often happens that a man with small property dies, and a bill is filed in the High Court of Chancery, and in the end the whole, or nearly the whole, of the property is absorbed in costs, which, when two sets of solicitors, one in the country, the other in town, together with counsel, are employed in a suit, cannot be wondered at.

The same result follows in other cases, as when bills are filed in small matters for specific performance, foreclosure, redemption, &c.

The bill proposes to enact, that "every suit that may now be commenced and prosecuted in the High Court of Chancery may hereafter be brought and prosecuted in the county courts held by virtue of the 9 & 10 Vict. c. 95, and the judges thereof shall have full jurisdiction to hear and determine the same, subject, nevertheless, to the provisions and restrictions herein-after mentioned; that is to say,

- (1). The sum of money or amount demanded or sought to be recovered by the plaintiff in any such suit shall not, exclusive of interest and costs, exceed the sum of 100*l.*, unless it be a distributive or other share of property sought to be divided or distributed:
- (2). The whole estate or property sought to be divided, distributed, or administered in any suit shall not exceed in value the sum of 500*l.*:
- (3). Where such suit seeks the recovery or sale of any lands, tenements, or hereditaments, the annual value thereof, or, where the same shall not be let, the annual sum at which the same shall be assessed to the relief of the poor, shall not exceed the sum of 10*l.*:

- (4). Where such suit relates to the foreclosure, redemption, or sale of any property in mortgage, the amount of the principal of such mortgage shall not exceed 300*l.*:
- (5). Where the suit relates to the dissolution or winding-up of any partnership, the gross value or amount of the whole property, stock, and credits of such partnership shall not exceed the sum of 500*l.*:
- (6). If the suit relate to the specific performance, or to the delivery up or cancelling, of any agreement for the sale or purchase of any property, the whole amount or value of the property shall not exceed the sum of 300*l.*:
- (7). No injunction, or order in the nature of an injunction, shall be granted or made by any county court:
- (8). No suit shall be brought in any county court relating to or involving any question concerning the sanity or insanity of any testator." (Sect. 21).

"Every judge of a county court shall, in addition to the powers now vested in him, have, when acting under the provisions of this act, all the power and authority now vested in any judge of the High Court of Chancery; and every county court treasurer, registrar, and high bailiff, shall discharge, and shall have authority to discharge, all the duties imposed upon him and them by this act, or by any rules and orders to be framed as hereinafter provided." (Sect. 22).

"The duties and obligations of and upon all suitors, jurors, and witnesses, and their liability to penalty and punishment, shall, in any proceeding under this act, be the same as those created, authorised, and imposed by the several statutes now in force relating to county courts." (Sect. 23).

"For the due execution of any judgment, decree, or decretal order made under the authority of this act, or of the rules and orders to be framed as hereinafter provided, the court shall have power to order, and the registrar, upon such order, shall have authority to seal and issue, and the high bailiff to execute, any writ or warrant of possession, writ or warrant of execution, or other process of execution for carrying into effect any judgment, decree, or decretal order of the said court; and such writs, warrants, and processes shall be in the form, and executed at the time and in the manner to be set forth in the rules and orders to be framed as hereinafter provided." (Sect. 24).

"If during the progress of a suit it shall be made to appear to the court that the subject-matter of the suit exceeds the limit, in point of amount, to which the jurisdiction of the county courts is hereby limited, it shall be competent for the court, if it shall think fit, to transfer the suit to the Court of Chancery, and thereupon the suit shall proceed in such one of the Vice-Chancellor's courts as the Lord Chancellor may by general order direct; and such Vice-Chancellor shall have power to regulate the whole of the procedure in the suit when so transferred: provided always, that if the county court shall deem it expedient that the suit should not be so transferred, it shall be lawful for the plaintiff to apply to the senior Vice-Chancellor at chambers for an order authorising and directing the suit to be carried on and prosecuted in the county court, notwithstanding such excess in the amount of the limit to which jurisdiction in the matter is hereby given to the county courts; and the Vice-Chancellor, after hearing the defendant or defendants, if he shall deem it right to summon them to appear before him for that purpose, or on default of the appearance of all or any of them, shall have full power to make such order." (Sect. 25).

The bill next provides—

With respect to the court in which proceedings in equity shall be taken. (Sect. 26).

For the remuneration of registrars and high bailiffs in matters of equity. (Sect. 27).

That certain fees are to be taken, out of which judges shall have their salaries increased to such an amount as the fees received will be sufficient to pay to each judge not exceeding 1600*l*. (Sect. 28).

Judgments and decrees are to be registered in the registry of county court judgments in London. (Sect. 29).

Power is given to frame rules and orders. (Sect. 30).

The scale of costs to be framed by the judges. (Sect. 31).

Next come two important sections, which will doubtless give rise to much discussion, viz. that "if any party in a cause in which jurisdiction is given to the county courts by this act shall be dissatisfied with the determination or direction of the judge on any matter of law or equity, or on the admission or rejection of any evidence, such party may appeal from the same to the Master of the Rolls, or one of the Vice-Chancellors, provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party, or his attorney, and also give security, to be approved by the registrar of the county court, for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, decree, or order, if he be the defendant, and the appeal be dismissed; provided nevertheless, that such security, so far as regards the amount of the judgment, decree, or order, shall not be required in any case where the judge of the county court shall have ordered the party appealing to pay the amount of such judgment, decree, or order, into the hands of the registrar of the county court in which such suit shall have been tried, and the same shall have been paid accordingly, or where the judge shall think it right that an appeal be made without any such security; and the said Court of Appeal may either order a new trial, on such terms as it thinks fit, or may order any judgment, decree, or order to be entered for either party, as the case may be, and may make such order, with respect to the costs of the said appeal, as such court may think proper; and such orders shall be final: provided that nothing herein contained shall authorise any party to appeal against any decision of a county court, given upon any question as to the annual rent or rateable value, or as to the value of any real or personal property, for the purpose of determining the question of the jurisdiction of the court under this act, nor to appeal against the decision of a county court, on the ground that the proceedings might or should have been taken in any other county court." (Sect. 32).

"Such appeal shall be in the form of a case agreed on by all parties, or their attorneys; and if they cannot agree, the judge of the county court, upon being applied to by them or their attorneys, shall settle the case, and sign it; and such case shall be transmitted by the appellant to the office of the Clerks of Records and Writs in Chancery." (Sect. 33).

On the whole, although this part of the bill will require some amendments, it will, we think, be a very useful measure.

If equity is good for the rich, why should it not be so for the poorer classes?

If the measure does lead to increased litigation, as it doubtless will, it does not follow that such litigation will be an evil. If thereby justice is done between

man and man, if injustice is prevented, if access to the High Court of Chancery is thereby rendered unnecessary, and forbidden in those cases, where to approach it is ruin, this part of the Lord Chancellor's measure will effect much good.

Above all, however, we think this part of the measure is important, as being a great step towards the fusion of law and equity; until which is effected, law as a science will never flourish in this country.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—Very considerable inconvenience was occasioned to a great number of persons by the closing of the Wills Office, at Doctors' Commons, on the 30th of last month. Many persons who had come a considerable distance from the country were astonished to find the doors of the office closed, with an announcement upon the door, that the officials were enjoying a holiday.

I should like very much to know by whose order the office was so closed, and, if by any order, under what authority such order was made; and whether any proper announcement, and where, was made to the public of such order, so that they might, at any rate, have a chance of knowing that wills could not be seen at Doctors' Commons on that day, and consequently be saved the trouble and expense of useless journeys.

I am, sir,

Your obedient servant,

A DISAPPOINTED APPLICANT

at Doctors' Commons on the 30th May, 1864.

TO THE EDITOR OF "THE JURIST."

SIR,—I observe, from the *Times* report of May 30, that the Lord Chief Justice of the Queen's Bench has declared that for the future serjeants-at-law, not having patents of precedence, shall have seats within the bar in term time. So far as we can see, a very proper arrangement. Some remarks are made in the report, as to the origin and precedence of those who are usually, but, we believe, erroneously, called "Queen's Counsel." These are, in truth, members of the Concilium Legale Regis, described by Lord Hale—a body of unknown antiquity, which includes the judges, though they have ceased to act since the revolution. Her Majesty's letters-patent, authorising silk, are addressed, "To our trusty and well-beloved" A. B., and constitute that favoured individual "one of our council, learned in the law," granting him "place, precedence, and pre-eminence in our courts and elsewhere," but interdicting him from acting "against the Queen." Lord Bacon's patent is in this style. The degree of the coif, on the other hand, that of a puisne serjeant, indicates a popular functionary who is to give legal advice and forensic aid to all, and to do, as the oath quaintly expresses it, according to the measure of his "cunning"—a word which, in the Plantagenet times, had a respectable import, very different from its modern signification.

Yours faithfully,

M.

Lincoln's-inn.

REGULA GENERALIS.

TRINITY TERM, 1864.

IT IS ORDERED, that from and after the last day of this present Trinity Term, the following fees may be taken by the sheriffs, undersheriffs, deputy sheriffs, sheriffs' agents, bailiffs, and others, the officers or ministers of sheriffs, in England and Wales, pursuant to the stat. 1 Vict. c. 55, intituled "An Act for regulating the Fees payable to Sheriffs, upon the Execution of Civil Process:"—

By sheriff for attending in court on the trial of every common jury cause or issue, from the party who entered the same for trial, the sum of . . . £0 10 6

For attending in court on the trial of every cause or issue tried by a special jury summoned by precept, under the 108th section of the Common-law Procedure Act, 1852, from the party at whose instance the same was so tried, the sum of . . . 1 1 0

(Signed)

A. COCKBURN.

W. ERLE.

FRED. POLLOCK.

SAMUEL MARTIN.

CHARLES CROMPTON.

G. BRAMWELL.

W. F. CHANNELL.

COLIN BLACKBURN.

J. S. WILLES.

J. B. BYLES.

NEW TRIALS MOVED IN TRINITY TERM.

COURT OF QUEEN'S BENCH.

CROWN PAPER.

Durham North-eastern Railway Co. v. Council of the Borough of South Shields.
Staffordshire Shepherd v. Postmaster-General.
Glamorganshire Reg. v. Aldermen and Burgesses of the Borough of Aberavon.
Coventry Smith v. Watson.

COURT OF COMMON PLEAS.

NEW TRIALS.

Midd.—Lindley v. Lacey | Lond.—Inchbald v. Western
— Cox v. Angell & an. | Neillgherry Coffee Co. (Limited).
Lond.—Moon v. Hall

DEMURRER PAPER.

Tuesday, June 7. | Callan v. Boulk (Case for Arbitration).
Cutler v. Larchen (D.)

COURT OF EXCHEQUER.

Midd.—Rogers v. Laing | Midd.—Watson v. Bennett.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, May 26.

The Scottish Clergy Disabilities Bill was read a second time, an amendment having been withdrawn, upon the understanding that the measure should be referred to a select committee.

Friday, May 27.

On the motion of the Duke of Somerset, the Naval Prize Acts Repeal Bill was read a second time.

The Naval Agency and Distribution Bill was read a second time.

The Naval Prize Bill was read a second time.

The Chimney Sweepers and Chimney Regulation Bill was read a second time.

Monday, May 30.

The Earl of Clarendon laid a bill on the table providing that the governing bodies that may in future be elected of public schools shall be subject to the control of Parliament. The second reading was fixed for Monday next.

The Local Government Supplemental Bill passed through committee.

The Divorce and Matrimonial Causes Amendment Bill passed through committee.

Tuesday, May 31.

The Summary Procedure (Scotland) Bill was read a second time.

The Penal Servitude Acts Amendment Bill was read a second time.

The Admiralty Lands and Works Bill was read a second time.

The Local Government Supplemental Bill was read a second time.

HOUSE OF COMMONS.—Thursday, May 26.

The Union Assessment Committee Act Amendment Bill, as amended, was considered, and some remaining amendments considered and agreed to.

The Highways Act Amendment Bill was read a second time, and ordered to be referred to a select committee.

The Vacating of Seats (House of Commons) Bill passed through committee.

The Army Prize (Shares of Deccan) Bill also passed through committee.

The Limited Penalties Bill was read a third time, and passed.

The *Solicitor-General* explained the object of this bill, which was to remedy an inconvenience relating to the Militia Laws, arising from a clause in a Newcastle Gas Bill (laughter).

The Chief Rents (Ireland) Stamps Bill, as amended, was agreed to, and ordered to be recommitted and reprinted.

The second reading of the County Voters (England and Wales) Bill was postponed.

Friday, May 27.

REGISTERING TITLES TO LAND IN IRELAND.

Mr. Scully moved an humble address be presented to her Majesty, praying that she would graciously be pleased to issue a commission to inquire and report as to the best system for registering titles to land in Ireland, and to frame a measure for that purpose; and also to consider and report as to the creation of transferable debentures upon land in Ireland.

After some debate, Mr. Scully withdrew his motion, on the understanding that the Attorney-General for Ireland would introduce a measure upon the subject as early as possible.

The Union Assessment Committee Act Amendment Bill was read a third time, and passed.

The Army Prize (Shares of Deccan) Bill was read a third time, and passed.

The Life Annuities and Life Insurances (Deficiency of Assets, &c.) Bill was reported.

The House agreed to the Lords' amendment of the Registration of County Voters (Ireland) Bill.

On the motion of Sir C. O'Loughlen, leave was given to bring in a bill to regulate the law in relation to the keeping together and discharge of juries in criminal cases, by giving judges power to discharge juries who could not agree.

On the motion of Mr. Whalley, leave was given to bring in a bill to amend the law as regards persons charged with petty offences, and to enable such persons and their wives or husbands to give evidence.

On the motion of the Attorney-General for Ireland, leave was given to bring in a bill to amend the practice and procedure at the Crown side of the Court of Queen's Bench in Ireland.

On the motion of the Attorney-General for Ireland, leave was given to bring in a bill to facilitate the taking of acknowledgments of married women in Ireland.

Monday, May 30.

Mr. Hodgkinson asked, in reference to the *Solicitor-General's* statement in the Court of Exchequer on Thursday

last, that the case of *The Attorney-General v. Laird and Others*, relating to the seizure of the Confederate rams, had been arranged; whether the arrangement alluded to involved the purchase of those vessels, and if so, whether only at their fair value or at some higher price; whether the inducement to the Crown to make such arrangement was a doubt as to the construction and application of the provisions of the Foreign Enlistment Act with regard to equipping and arming vessels; whether it was part of the terms of arrangement, that the alleged misdemeanour, under the 7th section of the Foreign Enlistment Act, should be condoned by the Crown, and that no claim for compensation for the seizure should be made by the defendants; and whether any legislation would be proposed in order to obviate in future the doubts and difficulties attending the construction and enforcing of the Foreign Enlistment Act, and thus prevent the arrangement of the recent case operating as a premium to shipbuilders to speculate on building vessels of war for belligerents.

The Attorney-General said—There was no admission that anybody had been guilty of a violation of the law. The Government stated that they would be prepared, for various reasons, to put an end to the matter on the terms of paying a fair value, but not upon the terms of paying any higher price. That value was much less than the sum first asked, and much less than the owners stated they could obtain from other purchasers if they had the command of the vessels. The parties closed with the Government offer, and on that footing the arrangement was made. As to whether the inducement to the Crown to make such an arrangement was a doubt as to the construction and application of the provisions of the Foreign Enlistment Act, the House is as well able to judge as I am as to the doubts which are prevalent, but, in this particular case, having regard to the particular nature of these ships, those doubts had no considerable place in the motives of the Government for entering into the arrangement. I am bound to say that it was not on account of any doubt in the minds of the advisers of the Crown that they were induced on their part to consent to the arrangement. Besides the security to the public, the Government had no desire to inflict any loss upon private individuals. As to the question how far the subjects of the Crown had a right to construct ships for the belligerents, no doubt opinions had been given by which individuals might be led to believe that they were right in acting in opposition to the views expressed by the Government, and, therefore, they might have acted under a bona fide belief that they were not exceeding the provisions of the law. The House, of course, would understand that these persons contended that they had not violated the law, and the Government entering into the arrangement did not affirm that they had been guilty. As to the terms of arrangement, no compensation was contemplated as part of the arrangement, and the Government did not proceed on the ground of a misdemeanour having been committed. As to the last part of the question, I have to state that I hope it will not be found necessary to propose any new legislation upon this subject, but the Government hope that all parties will so profit by what has taken place that no further prosecution of the kind will be rendered necessary. But the Government are as determined as ever to maintain the law as they understand it if its infraction should be attempted, and they do not consider that this arrangement will offer a premium to other shipbuilders to fit out such vessels, seeing that the owners represent that they would have been enabled to obtain a more profitable market if the ships had been completely under their control.

MISCELLANEOUS ESTIMATES.

On the vote of 9574*l.* for the expenses of Probate Court registries,

Mr. Hadfield asked that the committee might be furnished with a detailed list of the expenses and fees received. They were receiving 3,000,000*l.* a year, which were collected from the public in fees, out of which the proctors' compensation was paid, and he thought they should know if there was any chance of the fees to suitors being reduced.

Mr. Alderman Rose called attention to the custody of the wills in the present building, which, he understood, was not fire-proof. He wished to know if the Government had made arrangements for transferring them to some safer place of deposit.

Mr. Couper said, he shared the alarm of the hon. gentleman, for he believed a railway was to be carried under the present building, and a street through it. However, nothing could be done in the present case till the Government had given permission, and until after the wills and documents had been carefully removed; it was proposed ultimately to deposit them in the basement of the new courts of justice. He believed the present building was fire-proof, but it was surrounded with houses and offices which were not. The larger portion of the expenses connected with the Probate Court would be found under the head of law and justice, where the point raised by the hon. member for Sheffield could be better discussed than on this vote, which was for the expense of a new building for Manchester.

Mr. Alderman Rose asked when the right hon. gentleman proposed to find a new building for the wills. He understood the Board of Works was in possession of the land.

Mr. Couper said, that by the act the Board of Works could not take possession of the building without the assent of the Lords of the Treasury, and the hon. gentleman might depend upon it, they would not give their assent until after they had found a place of deposit for the wills and the documents. That would be done in ample time. The Lords of the Treasury would not neglect such an important duty.

The vote was then agreed to.

The Vacating of Seats (House of Commons) Bill was read a third time.

The Administration of Trusts (Scotland) Bill was read a second time.

The College of Physicians Bill was read a second time.

The Banking Co-partnerships Bill was read a second time.

The Burials Registration Bill was read a third time.

Mr. H. Seymour obtained leave to bring in a bill for facilitating the management and improvement of certain estates belonging to the Bank of England.

Tuesday, May 31.

Mr. Hodgkinson gave notice, that on that day month he would call attention to the subject of Endowed Grammar Schools, and submit a motion on the subject.

Mr. Hankey obtained leave to bring in a bill for defraying out of fees a portion of the expense of carrying into effect the Charitable Trusts Act, 1863.

The Valuation of Rateable Property (Ireland) Bill was read a second time.

Wednesday, June 1.

On the order of the day for the House resolving itself into a committee on the Test Abolition Bill,

Mr. Trefusis moved that the House go into committee on the bill this day six months.

After some debate, a division took place.

For going into committee..... 236

Against 226

Majority..... 10

The House went into committee, and the chairman immediately reported progress.

Mr. Ayrton moved that the motion for going into the Election Petition Bill be postponed.

Mr. Collins supported the amendment, and was speaking when the time for adjourning the debate arrived.

PARLIAMENTARY REPORTS AND PAPERS.

Report of the High Court of Admiralty in Ireland Commission.

A royal commission, dated the 21st September, 1863, was issued to J. D. Fitzgerald, one of the justices of the Court of Queen's Bench, Ireland; M. Longfield, one of the judges of the Landed Estates Court in Ireland; the late Sir William Atherton, A. G.; Sir R. J. Phillimore, Advocate-General; Sir Thomas Staples, Advocate-General for Ireland; T. O'Hagan, Attorney-General for Ireland; R. P. Collier, Esq. (now Solicitor-General); P. B. Follett, Esq.; H. Cadogan Rothery, Esq.; and John Haalitt, Esq.; with William N. Hancock, Doctor of Laws, and H. R.

Yaughan Johnson, Esq., as secretaries to the Commissioners, to inquire into the Constitution, Establishment, Officers, Practice, Procedure, and Fees of the High Court of Admiralty in Ireland.

The commissioners have made their Report, dated the 21st May, 1864, containing much valuable and interesting information upon the subjects on which they were desired to report.

The Report treats at some length on the following subjects:—1. Admiralty jurisdiction in Ireland prior to the Restoration. 2. Admiralty Courts in Ireland from 1660 to 1782. 3. Present constitution of the High Court of Admiralty in Ireland. 4. Report on the Court of Admiralty of Ireland in 1829, by the Commissioners of the Courts of Justice. 5. Exercise of prize jurisdiction by the Irish Admiralty Courts. 6. Changes effected in the High Court of Admiralty of England. 7. Present state of the High Court of Admiralty of Ireland. 8. Fees of the High Court of Admiralty of Ireland. 9. Amount of business transacted by the High Court of Admiralty of Ireland. 10. Extension of the jurisdiction, and improvement of the practice, of the court. 11. Proposed extension of jurisdiction to freight, demurrage, &c. 12. Discharge of the judicial duties of the court. 13. Provisions for appeal. 14. Salary of the judge. 15. All officers of the court to be placed on salary. 16. Retiring pension of the present registrar of the court. 17. Compensation to the registrar of the Court of Delegates. 18. Compensation to proctors. 19. Proctors' apprentices.

The recommendations of the commissioners to her Majesty are as follows:—

I. JURISDICTION, PRACTICE, AND PROCEDURE.

1. Assimilation.

That the jurisdiction, practice, and procedure of the High Court of Admiralty of Ireland should, as far as practicable, be assimilated to the jurisdiction, practice, and procedure of the High Court of Admiralty of England.

2. Appellate Jurisdiction.

- i. That the Court of Delegates should be abolished as a Court of Appeal from the High Court of Admiralty of Ireland.
- ii. That an appeal from the High Court of Admiralty of Ireland should lie to the Court of Appeal in Chancery in Ireland, with power to the Court to call in nautical assessors to its assistance.
- iii. That an appeal should lie from the Court of Appeal in Ireland to your Majesty in Council, provision being made to enable your Majesty to add to the Judicial Committee of the Privy Council one or more members of your Majesty's Privy Council in Ireland.
- iv. That the appellant should be at liberty to make his appeal in the first instance to your Majesty in Council, without resorting to the intermediate Court of Appeal.
- v. That the practice and procedure on appeals from the High Court of Admiralty of Ireland should be assimilated, as far as practicable, to the practice and procedure on appeals from the High Court of Admiralty of England.

3. Power of making General Orders.

That the power of making Orders to regulate the practice and procedure of the High Court of Admiralty of Ireland should be given to the judge of that court, subject to such Orders being confirmed by the Lord Chancellor of Ireland, and the Lord Justice of Appeal in Ireland.

4. Proposed Extension of Jurisdiction.

That in case it should be deemed expedient to extend the jurisdiction of the High Court of Admiralty of England to questions of freight and demurrage, and other questions of a similar nature likely to arise between the masters or owners of vessels and merchants, it would be desirable that a similar extension of jurisdiction should be given to the High Court of Admiralty of Ireland.

5. Security of Money of Suitors.

That all money of suitors should be lodged in the Bank of Ireland to the credit of the particular cause or matter, with the privity of the registrar, and should not be drawn out, except under the order of the Court, by a draft signed by the registrar, and countersigned by the judge.

II. ESTABLISHMENT.

1. Separate Court.

That it is desirable to maintain a court for the exercise of the Instance Jurisdiction in Admiralty in Ireland.

2. Judicial Establishment.

- i. That it is not expedient that the jurisdiction of the Court of Admiralty should be attached to any of the superior courts of common law in Ireland.
- ii. That as the changes we have recommended, if adopted, will probably have the effect of largely increasing the business of the Court, and to an extent which we are unable at present to estimate, we are of opinion that, until the extent of the increase of business has been ascertained, it cannot be determined whether it is expedient that the same person should be judge of the Court of Probate and of the Court of Admiralty in Ireland.
- iii. Under these circumstances, we are of opinion, that the most expedient course is to continue at present the separate judge of the High Court of Admiralty of Ireland.
- iv. That it is not expedient that the judge should have the power of appointing a surrogate, or of practising as a barrister, or of sitting in Parliament; we, therefore, think it will be necessary to increase the salary of the judge, which, in our opinion, should not be less than 1000*l.* per annum.
- v. That provision should be made, that in case of the illness or unavoidable absence of the judge, or in any suit or matter in which the judge shall have an interest, a judge of one of the superior courts of common law, or the judge of the Court of Probate, to whom it may be convenient to attend, shall, at the request of the Lord Chancellor, sit for the judge of the court, and exercise all his powers. (See stat. 20 & 21 Vict. c. 79).

3. Official Establishment.

- i. That the registrar should act as secretary to the judge, and should also discharge the duties of the office of seal keeper.
- ii. That according to the precedent established in the Court of Probate in Ireland and the Landed Estates Court, all the officers of the High Court of Admiralty of Ireland should be appointed by the judge, subject to the approval of the Lord Chancellor, to hold office subject to removal by the judge, with the sanction of the Lord Chancellor.
- iii. That the registrar and all other officers of the

High Court of Admiralty of Ireland should be required to perform their duties in person, except in case of temporary illness, or other reasonable cause, when some other officer or suitable person should be selected by the judge to supply the officer's place.

- iv. That the present registrar of the court, who holds his office by patent during pleasure, with power to act by deputy, and who has served for twenty-seven years, should have the option of retiring on full compensation.
- v. That the duty of attending the Court of Appeal in Chancery, in Admiralty appeals, should devolve on the registrar of the Court of Admiralty of Ireland.
- vi. That the present registrar of the Court of Delegates, who has held office for upwards of forty-two years, should receive compensation on the abolition of appeals in Admiralty cases to that court.

III. FEES.

- i. That the fees of the High Court of Admiralty of Ireland should be collected by means of Admiralty Court stamps under the Commissioners of Inland Revenue, and the officers of the court be paid by salaries provided for, as in England, by the the annual votes of Parliament.
- ii. That the power of varying, altering, or abolishing the fees should be vested in the Lord Chancellor of Ireland, with the assent of the Lords Commissioners of your Majesty's Treasury.

IV. OPENING THE PRACTICE OF THE COURT TO THE LEGAL PROFESSION.

- i. That the practice of the High Court of Ireland should be thrown open, as in England, to the legal profession.
- ii. That the proctors of the High Court of Admiralty of Ireland, now five in number, not being proctors in the Prerogative and Ecclesiastical Courts, and not having received any compensation under the Irish Probate Court Act of 1857 (20 & 21 Vict. c. 79), appear to us to be entitled to compensation for the abolition of their exclusive privilege.
- iii. That if the four present apprentices of the proctors complete their full time of five years, and are qualified to be admitted as proctors, they should be entitled to be admitted as attornies and solicitors without further apprenticeship, and without the payment of further stamp duty, after such inquiry into their fitness as the Lord Chancellor and the judges of the superior courts of common law shall direct.

Two returns to addresses of the House of Lords, dated respectively the 9th and 10th May, 1864, of copies of memorials and documents relating to the holding of a separate assize in the West Riding of Yorkshire, have been printed and delivered, pursuant to an order of the 12th May, 1864.

LAW SOCIETIES AND INSTITUTIONS.

JURIDICAL SOCIETY.—The next meeting will be held on Monday, the 6th June, at eight o'clock, P. M., precisely, when Mr. Vernon Lushington will read a paper on "The Case of *Tirnan and Others*, claimed by the United States to be surrendered as Pirates, under the Extradition Treaty of Washington." Edward

James, Esq., Q. C., will preside. The council will meet at half-past seven.

W. W. KERR, } Hon. Secs.
C. H. HOPWOOD, }
4, St. Martin's-place, Trafalgar-square,
June 1, 1864.

Legal Education.

OXFORD, May 26.—In a convocation holden this day at ten o'clock, the nomination of Montague Bernard, B. C., of All Soul's College, as Examiner in Civil Law, was put to the House, and approved of.

May 30.—LAW AND HISTORY SCHOOL.

Bourke, C. F. J., Corpus; Greene, T. W., Magdalen; Kenyon, Hon. G. F., Christ Church; Moore, H. H., Worcester; and Russell, T. C., Magdalen.
Livingstone, A. G., Queen's; Pickering, P. G. U., Merton; and Shrewsbury, C., St. John's.
Bachcroft, F. P., Exeter; Hamilton, H. B., Christ's Church; Wykeham, P. D., Exeter; and York, E. C., Christ Church.

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S. T. OWEN, } Examiners.
K. E. DIGBY. }

May 31.—In a convocation holden this day at two, a new form of statute for abolishing the teachership of Indian Law was passed. At the same time the new form of statute relating to "Viner's" foundation was rejected, on the ground, it is believed, that the professor is to be elected by convocation, and not by a select board.

CAMBRIDGE, May 31.—BACHELORS OF LAW EXAMINATION.—EASTER TERM.

Examined and Approved.—Bullock, Christ's; Cordaux, Christ's; Haldane, Trinity; Henslowe, Emanuel; Ds. Jardine, Christ's; Lidderdale, St. Peter's; Martin, Trinity Hall; Ds. Mozley, King's; Nichol's, St. John's; and Ross, E., Trinity.

J. T. ABDY, LL.D.
E. W. GIBBS, M.A.
HENRY DAVIDSON, M.A.
L. T. BAINES, M.L.

At the congregation mentioned above, the following degree was conferred:—

Master of Laws.—George William Marshall, St. Peter's College.

PUBLIC EXAMINATION OF STUDENTS.

TRINITY TERM, 1864.

At the general examination of the students of the Inns of Court, held at Lincoln's Inn Hall, on the 19th, 20th, and 21st May, 1864, the Council of Legal Education have awarded to—

David Lyell, Esq., student of the Inner Temple, a studentship of fifty guineas per annum, to continue for a period of three years.

Francis Turner, Esq., student of the Middle Temple, an exhibition of twenty-five guineas per annum, to continue for a period of three years.

John Chester, Esq., student of the Middle Temple; Maurice F. Farrell, Esq., student of the Middle Temple; and Francis Henry Lascelles, Esq., student of the Inner Temple, certificates of honour of the first class.

Richard Harris, Esq., student of the Middle Temple; George Winter Bomford, Esq., student of Lincoln's

inn; Rees Edward Davies, Esq., student of Lincoln's-inn; Hereford Brooke George, Esq., student of the Inner Temple; Richard Chaffey Baker, Esq., student of Lincoln's-inn; Harrison Falkner Blair, Esq., student of the Inner Temple; John Hennell, Esq., student of Lincoln's-inn; and Charles Frederick Hammond, Esq., student of the Middle Temple, certificates that they have satisfactorily passed a public examination.

By order of the Council,

(Signed) WESTBURY, C., Chairman.

Council Chamber, Lincoln's-inn,

May 27, 1864.

Appointments.

Mr. Philip Henry Pepys, principal secretary to the Lord Chancellor, has been appointed a registrar in the Court of Bankruptcy, in the room of the Hon. R. Bethell, *resigned*. Mr. Augustus B. Abraham has been appointed principal secretary. Mr. John Stuart, son of Vice-Chancellor Stuart, will succeed Mr. Abraham as Secretary of Presentations.

We understand that Mr. Cuthbert Ellison, of the Inner Temple, who was formerly of the Home Circuit, until his appointment as stipendiary magistrate at Newcastle-upon-Tyne, will be appointed as a Metropolitan police magistrate at the Worship-street Police-court, in the room of Mr. Leigh, who has resigned. Mr. Cuthbert Ellison is now stipendiary magistrate at Manchester.

WEST RIDING OF YORKSHIRE.—CHANGE OF ASSIZE TOWN.—Information has been received in Leeds that the Privy Council have decided on recommending her Majesty to grant an order for the holding of Assizes for the West Riding of Yorkshire at Leeds, instead of at York, as heretofore. It is expected that the change will take place at the ensuing Summer Assizes. Leeds, like York, will be in the Midland Circuit.

THE RELATIVE PRECEDENCE OF QUEEN'S COUNSEL AND SERJEANTS-AT-LAW.—In the Court of Queen's Bench, on Saturday, the Lord Chief Justice announced that in future all serjeants-at-law, whether with or without patents of precedence, would sit within the bar. The Lord Chief Baron of the Court of Exchequer has also noticed that the like privilege will be extended to his court. This privilege of sitting within the bar in these two courts has hitherto, for many years past, been limited to Queen's counsel and to those serjeants or barristers-at-law having patents of precedence. The serjeants are the more ancient order of legal practitioners, and in former times enjoyed many exclusive privileges. The last of them was their exclusive right to practise in the Court of Common Pleas, which was abolished in 1846, when by statute this right was abolished, and the practice of that court was thrown open to barristers of all ranks. By the effect of the present proceeding of the superior courts, therefore, serjeants-at-law now enjoy the same privileges in all courts of inferior jurisdiction.

THE CONVOCATIONS OF THE CHURCH OF ENGLAND.

—Our convocations are now assembled as follows:—The royal writs convening them are issued by the Crown, together with the writs for calling together the Parliament. These writs are issued to the archbishops, who are commanded to call together the bishops of each province, the deans, archdeacons, chapters, colleges, and the clergy of each diocese. On the receipt of the royal writ the archbishop issues his

mandate. The Archbishop of Canterbury directs his to the Bishop of London, who summons the other bishops of the province; and each bishop in his turn directs a mandate to the dean and chapter of his cathedral, and to his archdeacons; and these last cite the clergy of the archdeaconries to meet in order to elect proctors. The proceedings in the province of York differ slightly. Now, since all these forms are gone through at the present day whenever a new Parliament is summoned, why are not our provincial convocations in as full vigour as our Parliament? It would take up too much space to answer this question fully; but it may be sufficient to say that the royal license to deliberate on canons (without which license canons certainly cannot be enacted) has not been granted to convocation since the year 1777. It is generally believed that the reason for which it was then withheld was, because the lower house of the convocation of the province of Canterbury gave offence to the Government by their opposition to a sermon preached by Dr. Hoadly, Bishop of Bangor, and to a book published by him. But although no license to treat on or enact canons, has since that date been granted to our convocations, they have been, as has been said, regularly summoned. They are thus allowed to be part of our constitution; and if, in the long course of years during which they have been so convened, there has not been on the part of the bishops of the church an earnest desire and endeavour to see that the work which belonged to these bodies was done by them, we must, at all events, not blame only the civil power for the silence of the church in her synods.—*Churchman's Family Magazine*.

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THE JURIST.

LONDON, JUNE 11, 1864.

LORD WESTBURY'S County Court Act Amendment Bill, which we have already discussed (*ante*, pp. 199 and 212), seems likely to receive considerable alteration and amendment in the House of Lords. We commented (*ante*, p. 199) on the unreasonable shortness of the period of one year, which the Chancellor's bill proposed as the statutory limitation for debts of a certain amount, and we are glad to find that both Lord Chelmsford and Lord St. Leonards propose to substitute the period of three years; Lord Chelmsford's amendment also introducing the saving effect of a part payment as well as of an acknowledgment in writing. Lord St. Leonards also proposes to introduce the following clause:—"No packman or person taking or sending his goods for sale from house to house shall recover against the husband or father of any wife or daughter to whom any such goods shall have been, or shall hereafter be, sold, for the price of the same, unless such husband or father shall have been present at such sale, and sanctioned the same."

This is a very important clause, and would, no doubt, afford a great protection in many cases to husbands and fathers, but we think it will require to be modified, as it may open the door to fraud on their part. A husband may give the most express direction and authority to his wife to order goods from the packman, and, in the present form of the clause, he may even give her a written authority to order the goods, that she may shew it to the packman, and yet he may resist payment, because he was not present at the sale. This would be a manifest injustice. Probably some provision may be introduced, that the husband or father shall not be liable unless the wife or daughter has his *antecedent* authority for ordering the goods; and some mode of giving the authority may be devised, in order that there may be clear proof of it when the packman goes for his debt. At all events, we think that the clause in its present shape is too stringent.

Lord St. Leonards also proposes to leave out all the clauses relating to equitable jurisdiction. We do not think this alteration expedient, or likely to be carried.

The provisions as to fraudulent and insolvent judgment debtors, whose debts and liabilities are small, are numerous, and will, no doubt, be much discussed. Among them there is one clause, which is novel, and will, we think, meet with considerable opposition. It is this:—

"A copy of every order by which a debtor is ordered to pay into court any sum weekly, or at other intervals, shall be sent by post by the high bailiff, under the seal of the court, to the person by whom such debtor is employed, or in whose service he is on hire; and the person receiving such order is hereby authorised and required to retain out of the wages due, or money earned from time to time to or by such debtor, the weekly or other instalment directed to be paid, and

the money so retained shall be accounted for and paid by such persons to the high bailiff, upon his application for the same."

This clause thus places the employers of labour in the position of officers of the county court—a distinction which they can have no desire to attain. Suppose a millowner, or other large employer of labour, to have several hundred men in his employ. There is no improbability in his receiving fifty orders, and being required to pay over to the county court the wages of fifty of his men at the same time, it would be almost necessary for him to keep a clerk for the purpose of duly observing these orders, and keeping himself clear of contempts of Court. The provision is also likely to expose the master to disagreeable conflicts with his men when he retains their wages under the orders of the Court; and on the whole, we think it is a protection to which the creditor is not entitled.

The bill contains several provisions as to actions brought in the superior courts for debts or liquidated money demands of 20*l.* and under; the object of them being to deprive the plaintiffs in such cases of their costs, and to compel them to sue in the county court. They enable the defendants in such cases to apply to a judge for an order remitting the case to the county court, and will, we trust, be carried. And then comes a provision applicable to certain actions of tort.

"It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, seduction, or other actions of tort may be brought in a superior court, to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant, should a verdict be not found for the plaintiff; and thereupon a judge of the court in which the action is brought shall have power to make an order, that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs, to the satisfaction of one of the Masters of the said court, all proceedings in the action shall be stayed; or that, in the event of the plaintiff being unable or unwilling to give such security, that the cause be remitted for trial before a county court to be therein named; and thereupon the plaintiff shall lodge the order with the registrar of such county court, who shall appoint a day for hearing of the cause, notice whereof shall be sent, by post or otherwise, by the registrar, to both parties, or their attorneys, and the county court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed, by a memorandum signed by them, that the said county court should have power to try the said action, and the same had been commenced by plaint in the said county court; and the costs of the parties shall be allowed according to the scale of costs in use in the county courts, and the costs of issuing the writ of summons, and any other proceedings in the superior court, shall also be allowed to the successful party, according to the scale in use in such latter court."

This is a most salutary provision, and one which we can imagine certain individuals contemplating with terror and dismay. Every person who has any expe-

rience of the *Nisi Prius* business of the courts knows well that trumpery actions, and the most trifling accidents, are often taken up and fought from *beginning to end* by persons who look only to the verdict of the jury for their fees, charges, and costs, and who undertake that the plaintiffs shall be at no expense even if they lose. They trust to the sympathies of the jury, and the much-abused appeal for justice for a poor man. The result is, that many persons, although they are not legally, or even morally, liable to make compensation, prefer compromising an unfounded demand to the risk of an adverse, or even of a favourable, verdict. We do earnestly hope that this provision will be carried, and when carried, that the judges will act heartily and vigorously upon it. Half their time at *Nisi Prius* is occupied by such actions, and they well know how partial juries are to the plaintiffs in them. The poor man is not deprived of justice, for he can go to the county court if he believes he has a just claim, and there is no reason whatever for supposing that he will not obtain justice there. The only persons, perhaps, who have a right to complain are the county court judges themselves, upon whom a fresh burthen would thus be cast; but we do not think that, practically, this will be found to be the case, for it will not be worth the while of those who hunt up and instigate these actions to conduct them in the county courts.

We repeat our earnest hope that this provision may pass into law; possibly it may be modified when it comes under discussion, although at present it does not appear to us to require modification. We also repeat our hope that the judges will not hesitate to apply it when they are called upon to do so.

Upon the whole, there is good reason for thinking that this bill of Lord Westbury will eventually become a wise and salutary measure, and sweep away some existing abuses in the law.

THE summary jurisdiction conferred by the Divorce Act (20 & 21 Vict. c. 85, s. 21) enabling a police magistrate within a metropolitan district, the justices in petty sessions, or the Court for Divorce and Matrimonial Causes, to grant to a wife deserted by her husband, an order protecting her earnings and property acquired since the commencement of the desertion, has, on the whole, operated most beneficially.

A singular defect, however, has been discovered in a clause of the act (sect. 23), which enables the husband, or his creditors, or any person claiming under him, to apply to the Court, or to the magistrate or justices by whom a protecting order has been made, for the discharge thereof, for it has been decided that a police magistrate has no jurisdiction to rescind an order made by his colleague, even though such colleague may have died since the order was made; and it seems also to be doubtful whether the Court has jurisdiction. (*Re Mary Elizabeth Sharpe*, 12 Weekly Rep., Q. B., 756).

In order to prevent the inconvenience and injustice which might arise from its not being possible to discharge a protecting order improperly obtained, Lord St. Leonards has brought in a short bill, intitled "An Act to amend the Act relating to Divorce and Matrimonial Causes in England, 20 & 21 Vict. c. 85," which enacts, that in case the order shall have been made by a police magistrate, and the said magistrate shall have died or been removed, or have become incapable of acting, then in every such case the husband or creditor, or any person claiming under the husband, may apply to the magistrate for the time being acting as the successor, or in the place of the magistrate who

made the order of protection, for the discharge of it, who shall have authority to make an order discharging the same; and an order for discharge of an order for protection may be applied for to, and be granted by, the Court, although the order for protection was not made by the Court; and an order for protection made at one petty sessions may be discharged by the justices of any later petty sessions, or by the Court.

25 & 26 VICT. c. 42 (MR. BOLT'S ACT).

It is now pretty generally admitted among law reformers, that the distinction between law and equity is altogether to be condemned; and that there ought to be but one set of Courts to try all kinds of questions. However correct this view may be in theory, few will deny that there is little probability of such a fundamental revolution in our judicial system for a considerable time to come. Such being the case, it is clearly desirable, that whenever a matter is brought before any Court, whether of law or of equity, that Court should give complete and satisfactory relief as to the whole matter; and that suitors should not be bandied about from one side of Westminster Hall to the other, and back again, before they can get justice done in the whole matter in question. To attain this object was the aim of the act which we are now considering. Various prior acts had, indeed, conferred power upon the Court of Chancery to give complete relief in all cases brought before it; but judges are mortal men, and the power of usage and of precedent is strong, and it was found, that practically the Court was very slow to avail itself of its new powers, so long as a choice was left to it. Under these circumstances, the present act was passed, with the view of making it absolutely compulsory upon the Court, with one exception, to decide for itself all those questions which it had been in the habit of sending to be tried elsewhere. The real pith and marrow of the act lies in an exceedingly small compass. Sect. 1 enacts, that in all cases in which any relief or remedy within the jurisdiction of the Court of Chancery is or shall be sought, in any cause or matter instituted or pending in that court, and whether the title to such relief or remedy be or be not incident to, or dependent upon, a legal right, every question of law or fact, cognisable in a court of common law, on the determination of which the title to such relief or remedy depends, shall be determined by or before the same Court. The 2nd section provides, that the Court of Chancery may nevertheless direct an issue, to try any question of fact, before a jury at common law, whenever it shall appear to the said Court that such question of fact may be more conveniently so tried. There are other provisions, not necessary to be mentioned here. Considering the importance of the act, it is singular how few decisions upon it have been reported. It would, however, be a great mistake to suppose, that the operation of the act has been confined to this comparatively small number of cases. It has had an indirect, but not unimportant, bearing upon a great number of other cases. We now propose shortly to consider the reported cases.

It was soon decided, in conformity with the obvious intent of the act, that it was no longer allowed to the Court of Chancery to direct a motion or other proceeding to stand over with liberty to bring an action. Some slight doubt was indeed thrown out upon this point by the Lord Justice Knight Bruce in the case of *Spencer v. Jack* (8 Jur., N. S., part 1, p. 1165); but the point was finally decided by the Lords Justices, in the case of *Baylis v. Watkins* (Ib.). In that case a decree had been made for the administra-

tion of the estate of a deceased person. During his lifetime his wife had commenced proceedings against him in the Divorce Court; and a claim was made by her solicitor against the husband's estate for costs incurred in that suit. The claim was disputed by the executors. Sir J. Stuart, V. C., directed the matter to stand over, with liberty to the solicitor to bring an action. On appeal, the Lords Justices decided, that since the passing of this act, this could not be done, and that the Court was bound to hear and determine the whole matter itself. The same point was decided in *Copeland v. Webb* (1 N.E. 119); *Egmont v. Darell* (1 Hem. & Mil. 563); and *Re The Catholic Publishing Company* (10 Jur., N. S., part 1, p. 192; 12 Weekly Rep. 455). In the case of *Curlewis v. Carter* (9 Jur., N. S., part 1, p. 1118; 12 Weekly Rep. 97), a question arose as to the effect of the statute, where an action at law was pending at the time of the filing of the bill. In that case, the defendant in equity, Mr. Carter, had brought an action of trover against the plaintiff in equity, Mr. Curlewis, to recover possession of some horses. The action was commenced after the passing of the act. Mr. Curlewis then filed his bill for an account, and moved for an injunction to restrain all further proceedings in the action. His counsel argued that the Court was now bound to decide all questions, whether of law or fact, arising in the course of the determination of any cause in Chancery. Sir J. Stuart, V. C., however, dismissed the motion, with costs. This would seem to be right. Had not the action been pending, the Vice-Chancellor would, no doubt, have been bound by the act to decide the questions raised by the action at law; but it could not have been the intention of the act to render it compulsory upon the Court to assist the plaintiff in equity in getting rid of an action in which he might have made a slip, or in which, from any other circumstance, he found himself at a disadvantage. This would in fact be directly contrary to the spirit of the act: which is, that all courts, of whatever kind, should themselves decide all the questions arising in the course of any proceeding before them, instead of sending some such questions to another court for determination. Now, according to the contention of the plaintiff in *Curlewis v. Carter*, the act would directly cause the transfer of a large number of causes actually pending before courts of law to the Court of Chancery.

This case has some bearing upon the next class of decisions to which we shall refer; which are those in which it has been held that the jurisdiction of the Court, as apart from its practice, has not been in any way altered by the act. In *Eaden v. Firth* (1 Hem. & Mil. 575), to be again referred to, and in *Davenport v. Jenson* (1 N.E. 173), it was expressly laid down, that the powers of the Court were not limited, nor was its procedure affected, by the act. In connexion with this branch of the subject, it is important to refer to *Johnson v. Wyatt* (9 Jur., N. S., part 1, p. 1333; 12 Weekly Rep. 234) and to *Swaine v. The Great Northern Railway Company* (before Sir W. P. Wood, V. C., 9 Jur., N. S., part 1, p. 1196; and before the Lords Justices, 10 Jur., N. S., part 1, p. 191; 12 Weekly Rep. 391). In both these cases the question of damages was before the Court; and Sir Hugh Cairns's Act (21 & 22 Vict. c. 27), giving power to the Court to assess damages, was compared with the present act. In both cases the Court was of opinion, that the exercise of the powers conferred upon the Court by Sir Hugh Cairns's Act was not rendered compulsory by Mr. Rolt's Act. In *Johnson v. Wyatt*, the Lord Justice Turner merely stated his opinion, that it was not compulsory upon the Court to assess damages, though he would have been disposed to exercise the power of assessing damages given by Sir

Hugh Cairns's Act, had he thought that the plaintiffs had, upon the evidence, made out a sufficient case to entitle them to damages. In *Swaine v. The Great Northern Railway Company*, the bill was filed to restrain an alleged nuisance. Sir W. P. Wood, V. C., held that the plaintiff was debarred from relief, by way of injunction, on the ground of acquiescence for a long time prior to the filing of the bill. The Lords Justices, on appeal, confirmed his Honor's decision. It was urged, that, at all events, the Court was bound by the present act to decide the question of damages. We cite, upon this point, the following passage from the judgment of the Lord Justice Turner:—"I do not think that Mr. Rolt's Act makes it compulsory upon the Court to give damages. . . . Now, looking at the nature of the case, I think that it is not a case in which we should be well advised to go into the question of damages. The bill must be dismissed, as the bill in *Johnson v. Wyatt* was dismissed, though not exactly on the same grounds, for there we were of opinion that the plaintiff was not entitled to damages at all. We do not say that here; but the case would be more effectually disposed of in a court of law than here. Mr. Rolt's Act has placed the Court in the position of being compelled to decide questions of fact on insufficient statements contained in affidavits, or else by examining all the witnesses, and this sometimes places the Court in great difficulty. In this particular case the question of damages could be better disposed of in a court of law than here. The bill must be dismissed, without prejudice to the right of the plaintiff to bring such action as may be advised."

These cases must, we presume, be considered to have settled that the right to damages, when unconnected with any other species of relief, is not such a "relief or remedy, within the jurisdiction of the Court of Chancery," as is contemplated by the act. No doubt, if the Lords Justices had, in the case last mentioned, considered themselves bound to decide the question of damages, while dismissing the bill on all other grounds, the consequences might have been rather serious. Bills might have been filed simply with a view to obtain damages, with a merely colourable prayer for an injunction, or perhaps without any at all. On the other hand, as the Court of Chancery has power to assess damages, and, if thought necessary for that purpose, to summon a jury, hear witnesses in court, &c., in the same manner as a court of law, it would seem better that, where a bill is actually before it, the Court should decide itself the question of damages, if any such question should arise, instead of resorting to the old and long-condemned practice of leaving the parties to bring an action at law. It will be observed, that in *Johnson v. Wyatt* Lord Justice Turner did go into, and decide, the question of damages, though at the same time expressing his opinion that he was not obliged to do so by the present act. It would appear, therefore, that the Courts will determine, upon the circumstances of each particular case, whether they will or will not go into the question of damages. In both the above cases the bill failed, in so far as it prayed any other relief besides that of damages. But supposing an injunction to be granted, we apprehend that, following the above cases, the Court would not be compelled to decide the amount of damages, even if damages were prayed by the bill. It would, however, be highly desirable that the Court should do so in all cases in which the point of damages is pressed.

Covgill v. Rhodes (12 Weekly Rep. 190) is not important; but *Re The Catholic Publishing Company* (10 Jur., N. S., part 1, p. 192; 12 Weekly Rep. 455) raised a somewhat curious point. In that case the Master of the Rolls decided, according to the marginal note,

that if a creditor presents a petition for a winding-up order against a company, and the validity of the debt is in dispute, the Court is bound, under the present act, to determine for itself the question of the existence of the debt, and is precluded from ordering the petition to stand over until the debt has been established at law. His Honor accordingly proceeded to an examination of the evidence, and made an order thereupon. The Lords Justices, upon appeal (10 Jur., N. S., part 1, p. 301), reversed his Honor's decision, and dismissed the petition, with costs. Their Lordships appear, however, to have come to this conclusion upon the merits of the particular case; though it may be inferred from their judgments that they did not consider themselves bound to decide the existence of the debt.

Another very important point relates to the practice of granting issues. It will be remembered that the 2nd section of the act preserves to the Court the power of directing an issue, whenever it shall appear to the Court that any question of fact may be more conveniently so tried. The effect of the decisions upon this point appears to be, that the Court will only avail itself of the option thus left to it under special circumstances, and that it prefers to try such questions itself, with the assistance of a jury, if necessary. This view is clearly in accordance with the spirit of the act, and of the whole course of modern legislation; and we hope that it will be steadily adhered to, even although it may, in particular cases, lead to some inconvenience.

The first case to which we shall refer on this point, is the now famous suit of *Young v. Fernie*, the trial in which has occupied Vice-Chancellor Stuart's Court for so long a period. Sir J. Stuart, V. C., upon the cause first coming before him, directed an issue to try the validity of the patent. The cause then came before the Lord Chancellor on appeal, and is reported 10 Jur., N. S., 58; 12 Weekly Rep. 221, when his Lordship reversed the decision of the Vice-Chancellor. After referring to the present act, his Lordship said—"I construe the statute thus: that the rule is for the future to be, that these questions shall be decided in Chancery; and that the proviso contained in the 2nd section is to be the exception. The Court must be satisfied that justice will be better done in the particular case in question, by directing an issue, in order to bring the case within the exception. In a patent cause, I do not think anything can be more inconvenient than that, where questions of law and fact are bound up together, the two classes of questions should be separated, and be decided in different courts."

Another celebrated case, *Egmont v. Darell* (1 Hem. & Mil. 563), is important, in consequence of the observations which fell from Sir W. P. Wood, V. C., in the course of his judgment, p. 568. His Honor referred to the view entertained by Lord Eldon (*Pemberton v. Pemberton*, 11 Ves. 50), that it was better to direct terms to be set aside, with a view to bringing an action, than to direct an issue; for this reason, that, in the former case, a motion for a new trial would come before the common-law court which tried the action, whereas, in the case of an issue, the motion for a new trial would come before the Court of Chancery. Upon the same principle, his Honor stated that he should, now that an action was forbidden by Mr. Rolt's Act, prefer to try the case himself, with the assistance of a jury, instead of directing an issue; because, in the former case, the Court of Chancery, before which the trial was held, would be the Court to decide whether or no there should be a new trial; whereas, if he were to direct an issue, the case would be tried before a common-law court, but the motion for a new trial would come before himself in Chancery.

This opinion of his Honor seems to be in accordance with that expressed by the Lord Chancellor in *Young v. Fernie*, as well as with the obvious spirit and intention of the act; and the Master of the Rolls, in *Williams v. Williams* (12 Weekly Rep. 140), appears to have been disposed to follow the same course, though in that case his Honor came to the conclusion that there ought to be no trial whatever. It is, however, not altogether easy to reconcile these opinions with the course adopted by Vice-Chancellor Wood in the case of *Eaden v. Firth* (1 Hem. & Mil. 573). In this case a motion was made for an injunction to restrain the continuance of an alleged nuisance. The Vice-Chancellor was urged by the plaintiff's counsel, in the first place, to decide the question of nuisance or no nuisance himself, without a jury; or, secondly, if he required a jury, to summon it before himself. On the first point, he said, "I do not think the act (Mr. Rolt's Act) intended to introduce any alteration in the principles on which this Court acts; and, therefore, I consider that the defendant is still entitled to carry his case to a jury in any instance in which he would, before that act, have been entitled to require the plaintiff to establish his right at law." As to the second point, his Honor said, that he saw no reason for withdrawing the question from the jury, who would have had to try it if the plaintiff had, in the first instance, gone to law; and he directed an issue accordingly. As to the first point, we apprehend that his Honor must not be understood to say, that he had no authority to decide the question himself without a jury (which was the course adopted by Vice-Chancellor Stuart in *Young v. Fernie*), had he thought fit to do so. As to the second point, it is difficult to see why the observations made by the same judge in *Egmont v. Darell*, referred to above, as to the inexpediency of directing an issue, would not equally have applied to *Eaden v. Firth*. Nor does it appear very obvious, from the report of the case, what special circumstances there were, sufficient to take the case out of the rule laid down by the Lord Chancellor in *Young v. Fernie*; unless, indeed, it was thought that local knowledge was desirable on the part of the jury, for the purpose of deciding the question of nuisance or no nuisance.

One more case, and we have done. *Clarkson v. Edge* (12 Weekly Rep. 518) is a curious, and to some extent an exceptional, case. The circumstances, which were somewhat complicated, were as follows:—Previously to the year 1860, Edge, one of the defendants, carried on business in London as a gas-meter manufacturer, gas engineer, and gas-fitter. In that year he became bankrupt. His business was sold, and was purchased by the plaintiff Clarkson and Edge's son, the other defendant, as partners. Edge the elder was engaged, as part of the arrangement, to superintend the business, and he gave his bond not to exercise the business of a gas-meter manufacturer and gas engineer, not mentioning that of a gas-fitter, within a certain limit. Subsequently he took orders for gas-fittings, which he executed on the premises of the partnership. The bill prayed for an injunction to restrain Edge the elder from carrying on the business of a gas-fitter, and for an account. It was contended on the one side, that the gas-fitting business was not included in the bond; and, on the other side, that it was merely a branch of the business of a gas engineer. The Master of the Rolls granted an injunction against carrying on the business of a gas-fitter on the plaintiff's premises, with an account of the monies so received; but he stated that he felt very great difficulty in deciding whether or no the gas-fitting business was included in the bond, upon which depended the question, whether or no the plaintiff was entitled to a general injunction

to restrain Edge the elder from carrying on that trade within the limits mentioned in the bond. His Honor at first proposed to direct the cause to stand over, with liberty to bring an action to decide this point; but, upon his attention being drawn by counsel to the present act, he held that he was prevented from taking that course. He considered that it was not a case for directing an issue, and therefore dismissed the bill altogether, so far as it prayed an injunction against the carrying on the gas-fitting business, without costs, and without prejudice to the plaintiff's right to bring an action on the bond. It certainly appears to us exceedingly difficult to see upon what principle this case is to be supported. Here was a simple question of construction. Evidence had been gone into at length on both sides, and his Honor, for no apparent reason, except that the point was a difficult one, takes the extraordinary step of dismissing the bill altogether on this point, while granting relief at the same time as to other parts of the same transaction. Should the plaintiff bring his action, and succeed, he would have, we presume, to file a fresh bill to obtain the injunction, to which he would then have proved his right, unless, indeed, the common-law courts should see fit to grant an injunction, which in such a case they probably would do. His Honor had full power to summon a jury, to hear witnesses in court, or to take any other steps which he might consider necessary for determining the question; and it is difficult to see in what way a common-law court could be better qualified to decide the point than the Court of Chancery. In the meanwhile, the very evil which the present act was designed to repress, appears in this case to have been produced by its means in a peculiarly aggravated form.

Court Papers.

EQUITY SITTINGS, AFTER TRINITY TERM, 1864.

Before the LORD CHANCELLOR.

At Lincoln's Inn.

Tuesday .. June 21	{ First Seal.—Appeal Motions and Appeals.
Wednesday 22	{ Petitions, Appeals in Bankruptcy, and Appeals.
Thursday 23	{ Appeals.
Friday 24	{ Appeals.
Saturday 25	{ Appeals in Bankruptcy and Appeals.
Monday 27	{ Appeals.
Tuesday 28	{ Appeals in Bankruptcy and Appeals.
Wednesday 29	{ Second Seal.—Appeal Motions and Appeals.
Thursday 30	{ Appeals.
Friday July 1	{ Appeals.
Saturday 2	{ Appeals in Bankruptcy and Appeals.
Monday 4	{ Appeals.
Tuesday 5	{ Appeals in Bankruptcy and Appeals.
Wednesday 6	{ Third Seal.—Appeal Motions and Appeals.
Thursday 7	{ Appeals.
Friday 8	{ Appeals.
Saturday 9	{ Appeals in Bankruptcy and Appeals.
Monday 11	{ Appeals.
Tuesday 12	{ Appeals.
Wednesday 13	{ Appeals in Bankruptcy and Appeals.
Thursday 14	{ Fourth Seal.—Appeal Motions and Appeals.
Friday 15	{ Appeals.
Saturday 16	{ Appeals in Bankruptcy and Appeals.
Monday 18	{ Appeals.
Tuesday 19	{ Appeals.
Wednesday 20	{ Appeals in Bankruptcy and Appeals.
Thursday 21	{ Appeals.

Friday 22	{ Petitions and Appeals.
Saturday 23	{ Fifth Seal.—Appeal Motions, Appeals in Bankruptcy, and Appeals.

N. B.—Such days as his Lordship shall be engaged in the House of Lords are excepted.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Tuesday.... June 21	{ First Seal.—Appeal Motions and Appeals.
Wednesday 22	{ Appeals.
Thursday 23	{ Appeals.
Friday 24	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 25	{ Appeals.
Monday 27	{ Appeals.
Tuesday 28	{ Appeals.
Wednesday 29	{ Appeals.
Thursday 30	{ Second Seal.—Appeal Motions and Appeals.
Friday July 1	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 2	{ Appeals.
Monday 4	{ Appeals.
Tuesday 5	{ Appeals.
Wednesday 6	{ Appeals.
Thursday 7	{ Third Seal.—Appeal Motions and Appeals.
Friday 8	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 9	{ Appeals.
Monday 11	{ Appeals.
Tuesday 12	{ Appeals.
Wednesday 13	{ Appeals.
Thursday 14	{ Fourth Seal.—Appeal Motions and Appeals.
Friday 15	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 16	{ Appeals.
Monday 18	{ Appeals.
Tuesday 19	{ Appeals.
Wednesday 20	{ Appeals.
Thursday 21	{ Appeals.
Friday 22	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday 23	{ Fifth Seal.—Appeal Motions and Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Chancery-lane.

Tuesday.... June 21	{ First Seal.—Motions and General Paper.
Wednesday 22	{ General Paper.
Thursday 23	{ General Paper.
Friday 24	{ General Paper.
Saturday 25	{ Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday 27	{ General Paper.
Tuesday 28	{ General Paper.
Wednesday 29	{ General Paper.
Thursday 30	{ Second Seal.—Motions and General Paper.
Friday July 1	{ General Paper.
Saturday 2	{ Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday 4	{ General Paper.
Tuesday 5	{ General Paper.
Wednesday 6	{ General Paper.
Thursday 7	{ Third Seal.—Motions and General Paper.
Friday 8	{ General Paper.
Saturday 9	{ Petitions, Short Causes, Adjourned Summonses, and General Paper.

Monday.....	11	General Paper.
Tuesday.....	12	
Wednesday....	13	
Thursday.....	14	Fourth Seal.—Motions and General Paper.
Friday.....	15	General Paper.
Saturday.....	16	Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	18	General Paper.
Tuesday.....	19	
Wednesday....	20	
Thursday.....	21	Petitions, Short Causes, & Adjourned Summonses.
Friday.....	22	Remaining Petitions.
Saturday.....	23	Fifth Seal.—Motions.

*. At the Sittings after Trinity Term, the Master of the Rolls will hear Further Considerations in priority to Original Causes, until those set down before the 18th June have been disposed of, after which the Master of the Rolls will hear Further Considerations on every Monday during the Sitting of the Court.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.
At Lincoln's Inn.*

Tuesday....	June 21	First Seal.—Motions, Adjourned Summonses, and General Paper.
Wednesday....	22	General Paper.
Thursday.....	23	
Friday.....	24	Petitions, Adjourned Summonses, and General Paper.
Saturday.....	25	Short Causes, Adjourned Summonses, and General Paper.
Monday.....	27	General Paper.
Tuesday.....	28	
Wednesday....	29	
Thursday.....	30	Second Seal.—Motions, Adjourned Summonses, and General Paper.
Friday.....	July 1	Petitions, Adjourned Summonses, and General Paper.
Saturday.....	2	Short Causes, Adjourned Summonses, and General Paper.
Monday.....	4	General Paper.
Tuesday.....	5	
Wednesday....	6	Third Seal.—Motions, Adjourned Summonses, and General Paper.
Thursday.....	7	
Friday.....	8	Petitions, Adjourned Summonses, and General Paper.
Saturday.....	9	Short Causes, Adjourned Summonses, and General Paper.
Monday.....	11	General Paper.
Tuesday.....	12	
Wednesday....	13	
Thursday.....	14	Fourth Seal.—Motions, Adjourned Summonses, and General Paper.
Friday.....	15	Petitions, Adjourned Summonses, and General Paper.
Saturday.....	16	Short Causes, Adjourned Summonses, and General Paper.
Monday.....	18	General Paper.
Tuesday.....	19	
Wednesday....	20	
Thursday.....	21	Petitions, Adjourned Summonses, and General Paper.
Friday.....	22	
Saturday.....	23	Fifth Seal.—Motions.

N. B.—At the Sittings after Trinity Term, the Vice-Chancellor will hear Further Considerations in priority to Original Causes. Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART.
At Lincoln's Inn.*

Tuesday....	June 21	First Seal.—Motions and Causes.
Wednesday....	22	Causes.
Thursday.....	23	
Friday.....	24	Petitions and Causes.
Saturday.....	25	Short Causes and Causes.
Monday.....	27	Causes.
Tuesday.....	28	
Wednesday....	29	
Thursday.....	30	Second Seal.—Motions and Causes.
Friday.....	July 1	Petitions and Causes.
Saturday.....	2	Short Causes and Causes.
Monday.....	4	Causes.
Tuesday.....	5	
Wednesday....	6	Third Seal.—Motions and Causes.
Thursday.....	7	
Friday.....	8	Petitions and Causes.
Saturday.....	9	Short Causes and Causes.
Monday.....	11	Causes.
Tuesday.....	12	
Wednesday....	13	
Thursday.....	14	Fourth Seal.—Motions and Causes.
Friday.....	15	Petitions and Causes.
Saturday.....	16	Short Causes and Causes.
Monday.....	18	Causes.
Tuesday.....	19	
Wednesday....	20	
Thursday.....	21	Fifth Seal.—Motions and Causes.
Friday.....	22	
Saturday.....	23	General Petition Day.
Monday.....	25	General Petition Day.

N. B.—At the Sittings after Trinity Term, the Vice-Chancellor will hear Further Considerations in priority to Original Causes. Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. WOOD.
At Lincoln's Inn.*

Tuesday....	June 21	First Seal.—Motions and General Paper.
Wednesday....	22	Motions and General Paper.
Thursday.....	23	
Friday.....	24	Petitions, Short Causes, and General Paper.
Saturday.....	25	
Monday.....	27	General Paper.
Tuesday.....	28	
Wednesday....	29	
Thursday.....	30	Second Seal.—Motions and General Paper.
Friday.....	July 1	General Paper.
Saturday.....	2	Petitions, Short Causes, and General Paper.
Monday.....	4	General Paper.
Tuesday.....	5	
Wednesday....	6	Third Seal.—Motions and General Paper.
Thursday.....	7	
Friday.....	8	General Paper.
Saturday.....	9	Petitions, Short Causes, and General Paper.
Monday.....	11	General Paper.
Tuesday.....	12	
Wednesday....	13	
Thursday.....	14	Fourth Seal.—Motions and General Paper.
Friday.....	15	General Paper.
Saturday.....	16	Petitions, Short Causes, and General Paper.
Monday.....	18	General Paper.
Tuesday.....	19	
Wednesday....	20	

Thursday 21 Petitions.
Friday 22 { Remaining Petitions and General
Paper.
Saturday 23 Fifth Seal.—Motions.

N. B.—At these Sittings the Vice-Chancellor will hear such Further Considerations as are in the printed list in priority to Original Causes, and after the Fifth Seal Motions and remaining Petitions only will be heard. Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

COURT OF QUEEN'S BENCH.

TRINITY TERM, 27 VICT.—June 3, 1864.

THIS Court will, on Tuesday, the 14th day of June instant, and the two following days, and also on Wednesday, the 22nd day of June instant, and the two following days, hold Sittings, and will proceed in disposing of the cases in the New Trial, Special, and Crown Papers, and any other matters then pending; and will also hold a Sitting on Monday, the 4th day of July next, for the purpose of giving judgments only.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, June 2.

MORTGAGE DEBENTURE BILL.

Lord *Redesdale*, in moving the committal of this bill, said that it had originally come before their lordships as a private bill, but it was now introduced as a public measure, and its provisions, therefore, if dangerous or objectionable, would now be more open to correction.

Lord *Portman* and Earl *Grey* spoke in favour of the bill.

Lord *Overstone* believed most solemnly that when Parliament was legislating on such a subject, it ought not to give any indirect sanction to companies and concerns which might not be really deserving of public confidence. His first objection was, that the debentures issued by companies would go forth as mortgage debentures, whereas they were nothing of the kind. They were merely acknowledgments of debts by a public company. Next, the indirect consequences of the transactions which were likely to arise from the formation of these companies would lead to a wholesale system of registration; but registration would not give to the holders of these debentures that legal security to which they were entitled. His third objection was, that the bill would authorise trustees, who, by the trust, were only empowered to invest money on the best security, to invest it in debentures of this kind. A company must pay the full rate of interest to their subscribers. Then how could they afford to pay interest upon mortgage debentures as well, except by borrowing the money on inferior classes of mortgage securities. As an illustration, he might mention the Land Investment Society, sanctioned by the high character of a noble duke, which advertised that they were ready to lend money upon landed security, upon houses in the course of construction, either with or without a deposit of deeds. And then followed another advertisement from the same company, stating that they were prepared to issue mortgage debentures on the security of houses in course of construction with or without the deposit of the deeds. Now, with regard to the question of trustees, their investments ought to be in securities of the best class, but if they invested in these mortgage debentures, their only remedy would be against the company, and if they failed to pay they could only come in with the other holders of debentures, and compel the company to wind up their affairs, if their assets should be insufficient to meet the claims against them. It had been said that if the clause relating to trustees should be struck out the whole bill would virtually be destroyed; then what inference could be drawn, except that it was a most objectionable measure.

The Duke of *Mariborough* said the principle of the bill seemed not to be well understood; the debentures which were proposed under the bill were of a general character: they must be under the seal of the company, and be signed by two directors. The securities to be offered by the com-

panies would be threefold—first, the monies received in the shape of loans; next, the guarantee fund; and, lastly, the uncalled shares, amounting to half the nominal capital. It was a mistake to suppose that the profits would arise merely from the difference between the interest paid and received; it would include the receipts on the commissions on business. There would be no danger of improvident loans, as on half-built houses, as competent valuers would be employed, and the directors would be guided by them. The companies which availed themselves of this bill could not fairly be deemed of a speculative character, and the country was indebted to the noble lord the chairman of committees (Lord *Redesdale*), for the suggestion that the measure should be treated as a public and not a private one.

The Lord Chancellor observed, that for his own part he would not consent to any enactment which would alter the provisions of any existing trust. He had found in his judicial capacity that the greatest hardship arose from the limited nature of the powers conferred on trustees. Trustees naturally and properly were desirous to be safe; and they were averse to laying out their money, except upon securities expressly within the terms of the trust. With regard to companies under the present bill, the security offered had been correctly stated by the noble duke, but the security which would be offered to trustees investing would be of a novel character; no allotment would be made of any separate portion of the compound assets, and they would consequently have no direct or personal remedy. It was undoubtedly true that the debenture holder would have the security of half the nominal capital of the company. All that he could do would be to call upon the company to realise its property and to make an equal distribution amongst the debenture holders.

The Earl of *Donoughmore* said that there were great and increasing difficulties in the way of obtaining money upon the security of land on reasonable terms, in consequence of the many other ways in which money could now be invested, and therefore he thought that the clause which gave trustees the power to invest their funds in the improvement of lands was one of the most important in the bill.

After a few words from Lord *Redesdale*, the House went into committee on the bill.

Upon clause 32, which enables trustees who are authorised by the instruments respectively creating their trusts to lend or invest money on the security of land or real property, to invest money on debentures to be created under the proposed act.

Lord *Portman* said, that the clause enabled trustees to do that which they were positively forbidden to do by these settlements; and, therefore, he moved its rejection.

The Marquis of *Bath* seconded the motion.

Lord *Cranworth* suggested, that they might obviate all difficulty by making the clause prospective.

The Lord Chancellor suggested, that the clause be postponed, and a new one prepared in its stead.

The clause was accordingly struck out, and the bill passed through committee.

ECCLIASTICAL COURTS AND REGISTRIES (IRELAND) BILL.

The Archbishop of *Armagh*, in moving the second reading of this measure, explained its provisions. There were four principal objects sought to be accomplished; first, to reduce the twenty-six ecclesiastical courts and registries in Ireland to twelve; secondly, to improve and simplify the mode of procedure in the metropolitan and diocesan courts; thirdly, to reduce the twenty-six vicars-general to twelve; and, lastly, to provide that all appeals from the metropolitan courts in Ireland should no longer be made to the Court of Delegates, but be heard and determined by the Queen in Council. He proposed by this bill to have, in matters of doctrine and discipline, the same final court of appeal, whatever that court might happen to be, so that both churches, in this respect, might be dealt with as one and the same church.

The bill was then read a second time.

SUMMARY PROCEDURE (SCOTLAND) BILL.

On the motion of the Lord Chancellor, this bill was read a second time.

LOCAL GOVERNMENT SUPPLEMENTAL BILL.

On the motion of Lord *Stanley of Alderley*, this bill was read a third time, and passed.

OYSTER FISHERIES.

The Marquis of *Clanricarde* moved for leave to lay on the table a bill on the subject of oyster fisheries. The bill was founded partly on the Irish act, as far as it had been found useful, and partly on a private bill passed by their Lordships. He had taken care to guard against any improper infringement either of the rights of individuals or of the Crown.

The bill was read a first time.

Friday, June 3.

THE CHIMNEY-SWEEPERS AND CHIMNEYS REGULATION BILL.

The Earl of *Shaftesbury* having moved that the House resolve itself into a committee on this bill, and after some debate, various clauses having been amended, and some struck out, the rest were agreed to, and the bill was ordered to be reported.

THE NAVAL PRIZE ACTS AMENDMENT BILL, THE NAVAL AGENCY AND DISTRIBUTION BILL, and THE NAVAL PRIZE BILL, were passed through committee, and ordered to be reported.

DIVORCE AND MATRIMONIAL CAUSES (AMENDMENT) BILL.

The report of amendment in this bill was agreed to.

Monday, June 6.

PUBLIC SCHOOLS BILL.

This bill, after some debate, was read a second time.

NAVAL AGENCY AND DISTRIBUTION BILL.

The report of amendments was brought up, and agreed to.

DIVORCE AND MATRIMONIAL CAUSES (AMENDMENT) BILL.

This bill was read a third time, and passed.

Tuesday, June 7.

UNION ASSESSMENT COMMITTEE ACT AMENDMENT BILL.

This bill was read a second time.

PENAL SERVITUDE ACT AMENDMENT BILL.

On a motion for going into committee on this bill, on clause 2,

Earl *Grey* proposed to add words, providing, that where a criminal had been convicted more than three times, the sentence should be a minimum punishment of seven years.

Earl *Granville* said, that a discretionary power was already vested in the judges.

Earl *Grey* said, that was true; but they exercised that discretion so leniently, that Parliament ought now to limit it. He had seen cases where criminals had been convicted fifteen times, and then a sentence of only three years' penal servitude was raised. That was a perfect mockery.

After some remarks from Lord *Cranworth* and Earl *Granville*, the clause as amended was then agreed to.

On clause 4,

Lord *Houghton* moved an amendment to omit certain words; the effect of which omission would be to do away with the system of registration. We ought not to invest the police of this country with the powers it was proposed to confer upon them by this bill, and to make it a misdemeanour for a discharged criminal not to report himself to the police.

After some debate,

Lord *Houghton* said, he was willing to modify his amendment in such a way as that the ticket-of-leave man should be required to report himself once a month.

Their Lordships then divided, and there were—

For the amendment	..	..	..	41
Against it	..	..	..	49

Majority 8

Lord *Portman* moved, that the requirement to report themselves personally should be restricted to male convicts.

The amendment was inserted, and the clause agreed to. The remaining clauses and the schedule were also agreed to, and the bill was reported, and the House resumed.

ADMIRALTY LANDS AND WORKS BILL.

After some debate, this bill was reported, with amendments, to the House.

INSANE PRISONERS ACTS AMENDMENT BILL.

This bill passed through committee.

THE NAVAL AGENCY AND DISTRIBUTION BILL, and THE NAVAL PRIZE BILL, were respectively read a third time, and passed.

HOUSE OF COMMONS.—Thursday, June 2.

THE RIVERS POLLUTION (SCOTLAND) BILL.

The Lord *Advocate* said that this Bill would not be proceeded with.

THE COURT OF CHANCERY (IRELAND) BILL.

Mr. *Longfield* moved that it be read a second time on that day six months.

After a considerable debate, the amendment was withdrawn, and the bill read a second time.

COURT OF QUEEN'S BENCH (IRELAND) BILL.

The bill was read a second time.

BANKING CO-PARTNERSHIPS BILL.

This bill passed through committee.

LIFE ANNUITIES AND LIFE INSURANCES BILL.

This bill also passed through committee.

RAILWAYS (IRELAND) ACTS AMENDMENT BILL.

This bill was read a second time.

COLLEGE OF PHYSICIANS BILL.

This bill passed through committee.

JURIES ON CRIMINAL CASES BILL.

This bill was read a second time.

FISH (FRESH WATER) STREAMS.

Mr. *Neate* obtained leave to bring in a bill for the better preservation of fish in fresh-water streams.

Friday, June 3.

Lord *Stanley* moved that so much of the Standing Order 142 as related to the owning or using by railway companies of steam vessels, harbours, and docks, be repealed.

After some debate, the motion was negatived without a division.

BANKING CO-PARTNERSHIP BILL.

This bill was read a third time, and passed.

COLLEGE OF PHYSICIANS BILL.

This bill was read a third time, and passed.

BURIALS REGISTRATION BILL.

This bill was read a second time.

ACCIDENTS COMPENSATION.

Mr. *Ferrand* obtained leave to bring in a bill to amend the 9 & 10 Vict. c. 93, for compensating the families of persons killed by accident.

RAILWAY COMPANIES POWERS BILL.

This bill passed through committee.

RAILWAYS CONSTRUCTION FACILITIES BILL.

On a motion for the re-committal of this bill, the House resolved itself into a committee, and a motion made, that the chairman report progress, was agreed to.

RAILWAYS (IRELAND) ACTS AMENDMENT BILL.

The House went into committee.

Monday, June 6.

ECCLESIASTICAL COURTS REFORM.

In answer to a question put by Mr. *H. Seymour*, Sir *G. Grey* said he had never said that he had prepared a bill of ecclesiastical reform, and that, after a correspondence with some of the prelates, he had yielded to their objections to the measure. Last year, in answer to the hon. gentleman, he had stated that the Lord Chancellor had prepared a bill in reference to those courts, but that, after a conference with some of the most distinguished prelates, he had found that there were great difficulties in the way of carrying such a measure, and great differences of opinion on the subject. The bill was, therefore, postponed. But with regard to ecclesiastical registries, he had authority to state that the Lord Chancellor would introduce a bill on that subject this session, and that he hoped to fulfil—he would not say his promise—but the expectations that such a bill would be introduced this session in the other House. He admitted it was not the duty of the Government to postpone any ecclesiastical reform out of deference to the objections of the prelates. At the same time it was desirable to obtain their consent, if possible, before introducing a general bill on the subject. He had no correspondence to produce, because none had passed between himself and any prelate on the subject. The communica-

tions between the Lord Chancellor and the prelates on the matter were verbal communications.

GOVERNMENT ANNUITIES BILL.

This bill passed through committee

PUBLIC AND REFRESHMENT HOUSES BILL.

This bill passed through committee *pro forma*, and progress was reported.

LIFE ANNUITIES AND LIFE ASSURANCES BILL.

This bill was read a second time.

Tuesday, June 7.

THE UNIFORMITY ACT.

On the motion of Mr. P. Bouverie, the House went into committee to consider certain portions of the Act of Uniformity, according to which all fellows of colleges in Oxford and Cambridge were required to make a declaration of their conformity with the Church of England. It was proposed to repeal that requirement, and leave colleges themselves to make such provision in that respect as might seem best to them for the interests of the colleges and the universities.

Mr. Selwyn having made some remarks against the proposed measure,

The House went into committee, when a resolution was agreed to, and leave given to bring in a bill founded thereon to repeal certain portions of the Act of Uniformity relating to fellowships in Oxford and Cambridge.

RAILWAY TRAVELLING (IRELAND).

Sir C. O'Loghlen moved for leave to bring in a bill to compel every company to run at least one train on Sundays. Leave was then given.

MUNICIPAL CORPORATIONS (IRELAND).

Mr. M'Mahon moved for leave to bring in a bill to assimilate the law of Ireland to that of England, as to the qualification of burgesses in municipal corporations. Leave given.

PROCEDURE BEFORE JUSTICES.

On the motion of Mr. Paull, leave was given to bring in a bill to consolidate and amend the acts regulating procedure before justices of the peace out of quarter sessions in England.

UNION AND PARISH OFFICERS' SUPERANNUATION.

Mr. Villiers moved for leave to introduce a bill to provide for superannuation allowances to officers of unions and parishes. Leave given.

Wednesday, June 8.

INTOXICATING LIQUORS BILL.

On a motion by Captain Servis, that this bill be read a second time this day six months, the bill was, on a division, lost by a majority of 257.

RAILWAY COMPANIES POWERS BILL.

This bill was read a third time, and passed.

DRAINAGE AND IMPROVEMENT OF LAND (IRELAND) BILL.

This bill was read a second time.

CHIEF RENTS (IRELAND) BILL.

This bill was read a third time, and passed.

COUNTY CONSTABULARY SUPERANNUATION.

Sir J. Trollope obtained leave to bring in a bill to amend the law relative to superannuation of county constabulary.

GAME (IRELAND) BILL.

Sir H. Bruce obtained leave to bring in a bill to amend the law relating to the shooting and sale of game in Ireland.

CALLS TO THE BAR.

TRINITY TERM, June 6.

THE under-mentioned gentlemen were this day called to the degree of Barrister-at-Law.

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MIDDLE TEMPLE.

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John Cunningham, Esq., University of London (holder of a certificate of honour, first class, awarded by the Council of Legal Education).

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It is stated that Mr. Edward Beavan, of the North Wales and Chester Circuit, has been appointed Recorder of Chester, *vice* Mr. W. N. Welsby, who has resigned that office from impaired health.

Law Societies and Institutions.

JURIDICAL SOCIETY.—At the anniversary meeting recently held, Mr. George Denman, M. P., in the chair, the society proceeded to the election of officers for the ensuing year. The report of the auditors was read, which showed that the society numbered 130 members of the Bar, exclusive of honorary members; and that the finances were in a flourishing condition, there being a considerable surplus beyond all outgoings. The chairman delivered an address on the objects and prospects of the society, congratulating its members upon its prosperity, and urging their active co-operation in making known, and extending the sphere of, its usefulness.

On Monday evening last the society again met at its rooms in St. Martin's-place, Strand, to hear a paper read by Mr. Vernon Lushington, discussing the case of the so called "Southern Pirates" (*Tirman and Others*), recently argued before, and decided by, the Court of Queen's Bench. Mr. Edward James, Q. C., presided. Messrs. Westlake, W. M. Best, F. M. White, Charles Clark, and the chairman addressed the society, and Mr. Lushington spoke in reply.

SOCIAL SCIENCE ASSOCIATION.—A meeting of the Department of Jurisprudence and Amendment of the Law was held in the rooms of the association on Monday last, Lord Brougham in the chair, when the report of the standing committee on the County Courts Acts Amendment Bill was brought up. The report, which had been drawn with great care, described the provisions of the measure, and stated at some length the arguments on either side that apply thereto. It recommended the retention of a modified power of commitment by the county court judges, and considered the Lord Chancellor's proposal for a limitation of suits to one year too sudden and extreme a measure. The committee suggested a limitation of one year to sums not exceeding 40s., and of three years to sums not exceeding 20l. The report also referred to the fact that the department had, at a previous meeting, passed a resolution approving of the principle of conferring an equitable jurisdiction on the county courts, an object which would be to some extent carried into effect by the bill. A discussion on the report took place, in which Lord Brougham, Mr. Serjeant Pulling, Sir Eardley Wilmot, Mr. Hastings, Mr. H. Robinson, Mr. Joseph Raynor, and other gentlemen took part, and a resolution was passed approving of the report.

Mr. R. J. Scott, Bengal Civil Service, has been appointed to officiate as a judge of the High Court of Judicature, Bengal.

The London Gazette contains a warrant, given at the Palace at Balmoral, on the 30th ult., containing new and additional regulations respecting the Court of Common Pleas for the county of Lancaster, and the three divisions into which it is now divided for the holding of assizes and sessions.

DEATH OF MR. NASSAU W. SENIOR.—We have to record the death of Mr. Nassau William Senior, late Master in Chancery and Professor of Political Economy at the University of Oxford. Mr. Senior having gone through the usual curriculum at Eton, entered at Magdalen College, where he graduated in 1811, taking a distinguished first class in classics. Amongst his college contemporaries were Sir John T. Coleridge, the Earl of Delawarr, the Bishop of St. Asaph, the Provost of Oriel, the Dean of St. Paul's, and other gentlemen who have raised themselves to prominent positions in the learned professions and in literature.

In 1818 he was called to the bar, and in 1836 was appointed a Master in Chancery, during the Chancellorship of Lord Cottenham. In 1825 he was elected Professor of Political Economy at Oxford, being the first incumbent of the professorship which was founded in that year by the late Mr. Drummond, M.P. He resigned it in 1830, and was succeeded by the late Dr. Whateley, Archbishop of Dublin. In 1847 he was re-elected to the same office in succession to Dr. Travers Twiss. For some years he held the office of Examiner in Political Economy in the University of London. He has written many works on the science to the pursuit of which he devoted his life, and has contributed to the "Quarterly," "Edinburgh," and other reviews. Mr. Senior was seventy-three years of age.

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THE JURIST.

LONDON, JUNE 18, 1864.

THE LORD CHANCELLOR has brought forward another bill, the short title of which is, the "*Attorneys and Solicitors Remuneration, &c. Bill.*"

The &c., however, of Lord Westbury, like that of Littleton, commented upon with so much gravity by Lord Coke, comprehends much, and will, no doubt, take many by surprise who imagine that the short title to the bill is indicative by its principal contents.

The larger title of the bill does not much mend matters—it is, A Bill intituled "An Act to alter the Laws relating to the Remuneration of Attorneys and Solicitors, and to amend, in several Matters, the Law as administered in Courts of Equity."

This reminds us of a title to an old act, which, like the present, commenced by an alteration of the law relating to attorneys and solicitors, and ended with regulations as to the exportation of horned cattle.

Notwithstanding its title, the bill, although some of its clauses are open to doubt and criticism, contains some very excellent provisions. It is divided into four parts. The *first* part relates to the remuneration of attorneys and solicitors. The *second* part is termed "general provisions." Why, or wherefore, it is difficult to say. The *third* part relates to the administration of assets. And the *fourth* part gives power to make the Court of Chancery a trustee instead of private persons.

The preamble of the bill states, that the law which now regulates the remuneration of solicitors and attorneys-at-law by their clients, is *inexpedient and unjust*, and that it is expedient to amend the same.

Now, in order to put an end to this injustice, the bill provides, that an attorney or solicitor may enter into a contract with his client as to the manner, rate, or scale of his remuneration for his professional services, provided that such contract be reduced into writing, and signed by such attorney and client respectively, and duly attested by two or more credible witnesses (sect. 1).

Moreover, a solicitor appointed a trustee by any deed or will made after the 1st January, 1865, with the consent of his co-trustee or co-trustees, if any, may act as solicitor or attorney for the trust, and make professional charges, except where a certain remuneration is expressly provided under the trust for his professional services (sect. 2); and he may also take security for future costs or advances (sect. 3).

These provisions will require grave consideration before they ought to be passed into a law.

Although there is no doubt that, as a general rule, in ordinary cases, it is not advisable to interfere with any contract which any man may *bonâ fide* make with another, still there are exceptions to the rule, and we think it will be difficult to shew that the rules at present in force preventing an attorney from entering into contracts with his client as to costs, are not founded in sound policy and common sense.

There appear to be two strong objections to the

alteration in the law proposed by this bill: the first is, that attorneys and solicitors are a limited class, enjoying a monopoly, who can, therefore, readily combine to raise the price or value of their labour; and, secondly, the persons they deal with, viz. their clients, cannot, in general, form any adequate or correct notion of the value of the labour which they contract for. The client, therefore, would be left entirely at the mercy of the attorney, and in most cases any contract he might enter into would be in the dark.

Again: whom is it intended to benefit by these clauses—the client or the attorney? If a benefit is intended for the client, it is, we think, one of a very doubtful character. If a benefit is intended for the attorney, can Parliament be induced to believe that attorneys and solicitors are, as a general rule, so underpaid under the existing system as to require legislative assistance to enable them to deal upon equal terms with their clients? We think not.

The present system of costs is by no means perfect, but we very much doubt whether the proposed alteration of the law will be beneficial—at any rate to the client.

With regard to the 2nd clause, we think that the existing rule, which prevents a solicitor from deriving a profit from his trust, ought not to be altered.

With regard to the *second* part of the bill—coming under the rather strange head of "*general provisions*"—it is proposed to abrogate that rule of equity which renders it incumbent upon the purchaser of a *reversionary* interest to shew that he has given the full value for it (sect. 4).

The present law relating to the sale of reversionary or expectant interests, no doubt operates sometimes with great harshness, and *bonâ fide* sales are set aside on very unsatisfactory evidence as to value, but at the same time it seems right that protection should be afforded to persons who sell reversionary interests against those who take advantage of their distress to obtain such interests at an undervalue. The law may, however, require some modification, according to which a sale should not be set aside, unless the price was a certain proportion, as, for instance, one-half, one-third, or one-fourth below the actual value.

The clause in the bill making a chose in action assignable at law seems unobjectionable (sect. 5).

The next clause provides, that persons to whom property is given by will (beneficially and not as trustees) as joint tenants, are to take as tenants in common, except where the intention to create a joint tenancy is otherwise expressly declared (sect. 6).

The next two sections relate to the *equity of a married woman to a settlement*. Sect. 7 provides, that where a feme covert married before the 1st January, 1865, files a bill for a settlement, the right of her children to settlement shall not be lost by her death *before decree*. We quite agree with what is proposed to be done by this section, but we think it ought not to be limited to women married before the 1st January, 1865.

Sect. 8 is as follows:—"The equity, or right in equity, of every woman married on or after the 1st January, 1865, to a settlement out of *after-acquired*

property, whether real or personal, other than such right on equity as may arise by agreement or trust, express or implied, shall be and is hereby abolished."

We cannot believe that Parliament will act as unjustly to married women, as to take from them this valuable right to a settlement, without at any rate conferring upon them some other right not at present enjoyed by them over their own property as an equivalent.

The separate acknowledgment or examination of a married woman with respect to freeholds or copyholds, &c., of which she is seised as *trustee*, disposed of by her, with her husband's concurrence, in accordance with the trusts, is not to be necessary (sect. 9).

Part three of the bill, which relates to the *administration of assets*, provides, that the debts or demands of an executor or administrator against assets are not to have a preference over other debts or demands of the same degree (sect. 10). A judgment obtained against an executor or administrator by confession or collusion, is not to create any preference in the administration of assets (sect. 11). Creditors by statute, recognisance, or specialty, are not to have any preference over simple contract debtors in the administration of personal estate (sect. 12). Creditors by specialty, in which the *heirs are bound*, are not to have preference over creditors by specialty, in which the heirs are *not bound*, nor over simple contract creditors in the administration of real estate (sect. 13). Ecclesiastical dilapidations are to rank as simple contract debts (sect. 14).

Executors or administrators are to have full power notwithstanding anything in the will contained, to sell or convey, and mortgage, the real estate of the deceased for payment of debts, in the same manner as if it had been personalty; but the legal estate is not to vest, by virtue of the act, in such executors or administrators. A declaration in writing, under the hand of such executors or administrators, is to exonerate any real estate, the descent or devise of which shall be so assented to, from the power over the same thereby given to such executors or administrators, but not so as to prejudice any purchaser or mortgagee under the power aforesaid, without notice of such assent. But there is a *proviso*, that the power of sale or mortgage thereby given shall not be exercised without an order by an equity judge at chambers, an account being first taken of the personal estate of the deceased debtor, and of the debts and liabilities affecting the same (sect. 15). Next comes a clause saving the rights of the Crown, and the priorities of mortgages, &c., judgments, decrees, &c. (sect. 16).

All these provisions are most excellent; but we are inclined to think, that the Lord Chancellor might have ventured to dispense with the proviso to the 15th section, requiring the sanction of an equity judge to a sale or mortgage of real estate by an executor or administrator.

The fourth part of the bill enables persons, by deed or will, to settle personal property so as to vest the administration thereof in the High Court of Chancery in England or Ireland (sect. 17); the Court to make orders in respect thereof on petition, or summons without bill; or, if necessary, to direct the institution of a suit in respect thereof (sect. 18); and the Lord Chancellor, with the assistance of the Master of the Rolls, or one of the Vice-Chancellors, is to have power

to make General Orders to carry the act into effect (sect. 19).

With regard to the bill as a whole, although there are many provisions in it which, if enacted, will very materially improve the law, there are some, especially those few clauses which relate to attorneys and solicitors, the policy of which is, to say the least against them, doubtful.

Why the bill should bear its present title it is difficult to conceive, for it must result in all persons who look only at the outside being completely mystified.

We may here call attention to the marginal notes of the bill, some of which are exceedingly inaccurate; take, for instance, the marginal note to sect. 4:—"Purchase bond fide made not set aside, though under full value," the object of the section being to render valid the purchase of *reversionary interests*.

Then, again, the marginal note of sect. 7 is, "Where a court of equity decrees a settlement, right to settlement not to fail by death of married woman." This is the law at present; the object, however, of the section is, to provide, that when a married woman has taken proceedings to enforce her equity to a settlement, the right of her children to a settlement shall not fail by her death *before* decree.

Again: sect. 9 will astonish most lawyers by the announcement, "Separate acknowledgment, &c. of married woman abolished;" whereas the clause proposes to abolish the separate acknowledgment only in cases where the woman is seised as a trustee.

Although there is much that is valuable in this bill, it is, we think, to be regretted that an end is not put to this piecemeal kind of legislation.

Our law will never be much improved until our legislators have courage to deal with its amendment on a larger scale.

The example set by the Indian Civil-law Commissioners is one that may well be followed by those in authority here. Suppose, for instance, a well-considered bill were brought before Parliament, embracing the whole subject of the administration of *assets*, would that not be much better than to thrust in a few sections upon that subject in a bill intitled—Heaven save the mark—"The Attorneys and Solicitors Remuneration, &c. Bill?"

We can scarcely, however, suppose that a bill brought in at so late a period of the session is likely to pass; if it does not, however, it will still be useful, as laying before the public and Profession a measure containing many provisions which are of a highly beneficial character, and which, when arranged in a more scientific manner, may, we hope, become the law of the land.

INSTRUCTIONS TO GOVERNORS OF COLONIES AS TO PRIZES CAPTURED BY BELLIGERENTS.

THE war between the Federal and Confederate States of North America has called the attention of this country to several important questions of international law, having relation to our duties to the belligerents respectively in our rather novel state of neutrals in a maritime war.

The peculiar position of the Confederates, whose ports being all blockaded, have no place to which they can resort for the purpose of obtaining a regular condemnation of enemy's vessels taken as prizes, gave rise to the case of *The Tusalooa*, which put the Government of this country and the governor of the Cape in a very embarrassing position. The material facts of the case of *The Tusalooa* lie within a small compass.

Although ships of war belonging to each of the belligerent countries may come into our ports, her Ma-

jury, in order to maintain her neutrality, issued an order to the effect that no uncondemned prize was to be brought into British waters.

On the 21st June Captain Semmes, in *The Alabama*, captured a merchant ship called *The Conrad*, belonging to the Federal States. Captain Semmes put on board the captured vessel two guns, ten men, and a lieutenant, and changed her name to *The Tuscaloosa*, and converted her, as he alleged, into a tender to *The Alabama*.

On her first visit to the Cape, *The Tuscaloosa* was treated as a tender; on her second visit she was treated as a prize, not *bonâ fide* converted into a public ship of war, and was seized by the governor of the Cape as having been brought into British waters in contravention of her Majesty's orders. *The Tuscaloosa* was afterwards restored to the Confederates, upon the ground that she was seized when under a safe conduct.

Her Majesty's Government, however, did not take upon themselves to decide, in this case, whether what had taken place had converted *The Tuscaloosa* into a ship of war, sailing under the flag of the Confederates.

In order to put an end to the difficulties which arose in the case of *The Tuscaloosa*, the following important instructions have been sent to governors of colonies by her Majesty's Government, respecting the treatment of prizes captured by Federal or Confederate cruisers if brought into British waters:—

"Downing-street, June 2, 1864.

"Sir,—I think it well to communicate to you the decisions at which her Majesty's Government have arrived on certain questions which have arisen respecting the treatment of prizes captured by Federal or Confederate cruisers if brought into British waters.

"1. If any prize captured by a ship of war of either of the belligerent powers shall be brought by the captors within her Majesty's jurisdiction, notice shall be given by the governor to the captors immediately to depart and remove such prize.

"2. A vessel which shall have been actually and *bonâ fide* converted into, and used as, a public vessel of war, shall not be deemed to be a prize within the meaning of these rules.

"3. If any prize shall be brought within her Majesty's jurisdiction through mere stress of weather, or other extreme and unavoidable necessity, the governor may allow for her removal such time as he may consider to be necessary.

"4. If any prize shall not be removed at the time prescribed to the captors by the governor, the governor may detain such prize until her Majesty's pleasure shall be made known.

"5. If any prize shall have been captured by any violation of the territory or territorial waters of her Majesty, the governor may detain such prize until her Majesty's pleasure shall be made known.

"Her Majesty's Government have not thought it necessary to make any addition to the instructions already given with respect to cargoes, viz. that her Majesty's orders apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

"These rules are for the guidance of the executive authority, and are not intended to interfere in any way with the process of any court of justice.

"I have, &c.

(signed) "EDWARD CARDWELL."

According to these instructions, if a Confederate ship of war captures a merchant vessel belonging to the Federals, and converts and uses her as a public vessel of war, she may come into a British port, as not falling within the definition of a prize. The conversion, however, must be *bonâ fide*; it must not be made colourably, as, for instance, for the purpose of enabling the captors to dispose of the cargo of the captured ship, as was alleged to have been done by the captors of *The Tuscaloosa*. These instructions appear to be carefully and fairly drawn, and will, we think, answer the purposes for which they were framed.

WRITS REGISTRATION (SCOTLAND) BILL.

AN attempt has recently been made on the part of the Lord Advocate of Scotland, by the Writs Registration (Scotland) Bill, to abolish local registers in Scotland, and to have one general register in Edinburgh. The advantages which the bill would confer on Scotland were stated by the Lord Advocate to be—first, the removal of the necessity of a double search; secondly, the economy that would result from the abolition of a separate staff of officers; and, lastly, and which is represented as perhaps the most important part of the whole, to enable the staff of officers in the register-house to keep the index of the registers up to the day, or at least as near the day, of registering as possible, so as to facilitate and cheapen the operation of searching.

It need scarcely be said, that the rest of Scotland, headed by the important town of Glasgow, vehemently and successfully opposed this attempt at centralisation. In an able paper written in opposition to the plan of the Lord Advocate it is said—

1. The first of these advantages can be attained simply by abolishing the general register, and keeping up the whole of the local registers, as proposed by the bill. The result, as it is truly stated, of this operation, would be, that there would then be only one register to examine.

It is not at all necessary for the attainment of this desirable end, that these local registers should be removed from their present localities to Edinburgh. The search can be made at least equally well in the locality as in Edinburgh. But it is self evident that, in point of fact, the search can be made more conveniently, more expeditiously, and more economically on the spot, than, were it necessary, to send to Edinburgh for that purpose.

2. As to the second advantage held out, viz. the economy that would result from the abolition of a separate staff of officers. It is difficult to see how this is to be accomplished. It is proposed by the bill to keep up, even in Edinburgh, a system of separate county registers, and each of these must necessarily be under the charge of an efficient staff of officers, who must all be adequately paid for discharging the very important duties of their office, in the same way as the local officers must be paid for discharging the like duties. But if all deeds were to be transmitted to Edinburgh, there must necessarily be some additional expense incurred for correspondence, and the extra trouble thereby occasioned, irrespective altogether of the delay and inconvenience resulting from all deeds having to be sent to Edinburgh.

3. In regard to the advantage—treated as being, perhaps, the most important part of the whole bill—of enabling the abridgment and indexes of the registers to be kept up to the day, or nearly to the day, of registering, this can be done without the slightest difficulty in the county where the deed is registered. At present the minutes are prepared in the counties by

the local registrars; and, if so, it is manifest that the abridging and indexing, which are certainly not more difficult or important operations, can be performed equally well, and indeed better and more expeditiously, in the locality than in Edinburgh, where the officials must necessarily be strangers to, and ignorant alike of, the parties and the lands.

4. Were the general register abolished, as proposed by the bill, and the local county registers established as the only registers for land writs, and the abridgments and indexes made up and retained in the counties, it would be impossible to devise a more complete or simple and economical system of registration and searching.

Indeed, there seems to be no good reason why, as proposed by the bill, a separate register, either for adjudications or inhibitions, should be kept up. There can be objection to providing that these shall be recorded at once in the local register of writs, and in this way a complete record of the whole incumbrances affecting land would be kept in one register, thereby reducing the expense of a search to the lowest possible point.

5. It is a mistake to say that the change contemplated by the bill has been called for by the country. The necessity for abolishing the general register, and so getting quit of the double search, has been long acknowledged; but the whole of Scotland, with the exception perhaps of the metropolis, is nearly unanimous in condemning the proposal to remove the local registers to Edinburgh, as being wholly uncalled for, and as impeding, instead of facilitating, the operation of recording and searching.

In evidence of the preference given to the local registers, it may be here stated, that the Commissioners' Report shews, that the average number of writs annually recorded throughout Scotland is 14,405, of which only 3244 are recorded in the general register. The latter number includes all writs relating to lands in more than one county, which are at present recorded in the general register, and writs prepared by Edinburgh lawyers, for whom it possesses the facilities of a local register. With these deductions, the number of cases in which any other than Edinburgh practitioners prefer the general to the particular register is very small indeed.

The preference given by the public to the local registers is further shewn by the fact, that the increase in the number of writs recorded in those registers in 1860, as compared with 1848, was nearly 70 per cent., while the increase in the general register was only about 30 per cent.

What the majority of the inhabitants of Scotland want is, that the present system of local registration may be preserved, and further time may be given for maturing a plan embodying all practical improvements, without making these improvements dependent upon an inconvenient scheme of centralisation.

We are glad that the Advocate-General's bill has been defeated, and hope that in future, in England, all similar attempts at centralisation will be opposed as vigorously and as successfully.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, June 9.

REMUNERATION OF ATTORNEYS AND SOLICITORS.

The Lord Chancellor introduced a bill for the amendment of the law relating to the remuneration of attorneys and solicitors, and stated that if it were then read a first time, he would explain its provisions on the occasion of the second reading of the bill.

CHIMNEY SWEEPERS AND CHIMNEY REGULATIONS BILL.

The report of the amendments of this bill was agreed to.

COURT OF JUSTICIARY (SCOTLAND) BILL.

The Lord Chancellor in moving the second reading of this bill, said that its object was to give the Queen in Council the same power of creating new assize towns in Scotland which she possessed in England. There was a further provision in the measure to the effect that the assizes should not be completely withdrawn from any town without the consent of Parliament.

After a few words from Lord Brougham, The bill was read a second time.

THE COUNTY COURTS.

The Earl of Derby asked the noble and learned Lord on the woolsack whether he had written to the registrars of the county courts on the subject of the bill now passing through their Lordships' House. The answer from the county court judges had been laid upon the table, but he understood that the registrars also had been required to report on the circumstances of the cases in which persons had been imprisoned for debt. He would be glad to know whether such reports had been received.

The Lord Chancellor said he had not given any instructions whatever that such returns should be asked for, but he was not quite sure but that his secretary might have written to some particular registrars requesting information on the subject. He would look through those reports which might have been received, and if they bore on this subject would lay them upon the table. Although he retained the opinion that the period of limitation in the case of debts under 20*l.* should be fixed at one year, still he was prepared, owing to the information which he had received that such a transition from the present period of limitation would be too great, to fix the limitation to three years in the first instance. He also thought that a bill of this description ought to be prospective, and not retrospective, and the three years should count from the time of incurring the last item of the debt, the last payment, or the last acknowledgment in writing of the debt.

Lord Chelmsford said the amendment proposed by the noble Lord was, subject to trifling variations, the same as he had been prepared to move when the bill was in committee.

Friday, June 10.

CHAIN CABLES AND ANCHORS BILL.

This bill was read a third time.

INSANE PRISONERS ACT AMENDMENT BILL.

The report of amendments in this bill was received, and agreed to.

CHIMNEY SWEEPERS BILL.

This bill was read a third time, and passed.

COURTS OF JUSTICIARY (SCOTLAND) BILL.

This bill passed through committee.

Monday, June 13.

THE REMOVAL OF THE WEST RIDING ASSIZE TOWN.

Lord Wharncliffe rose to move, that an humble address be presented to her Majesty, praying that the late decision of the Privy Council, ordering the removal of the West Riding Assizes from York to Leeds, instead of to Wakefield, be reconsidered. Several commissions which had inquired into the subject were in favour of the removal to Wakefield, and not to Leeds. A population of 900,000 lived in Wakefield and its neighbourhood, and only 623,000 in Leeds or its neighbourhood. The prison and public offices were, moreover, at Wakefield.

Lord Houghton seconded the motion.

After some debate,

The Lord Chancellor said, that encouragement had been already given to Leeds to prepare to make arrangements for the administration of justice there. He earnestly hoped there would be no division; but if there were a division, he appealed to their Lordships not to place the Crown in the difficulty that would necessarily arise from a vote adverse to that of the House of Commons.

The House divided—

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THE PUBLIC SCHOOLS BILL.

After some debate, this bill passed through committee.

ADMIRALTY LANDS AND WORKS BILL.

The report of amendments in this bill was brought up, and agreed to.

SCOTTISH EPISCOPAL CLERGY DISABILITIES REPEAL BILL.

This bill passed through committee.

INSANE PRISONERS ACT AMENDMENT BILL.

This bill was read a third time, and passed.

COURT OF JUSTICIARY (SCOTLAND) BILL.

The report of amendments on this bill was brought up, and agreed to.

Tuesday, June 14.

MORTGAGE DEBENTURES BILL.

On the order of the day for the consideration of the report on this bill,

The Earl of *Malmesbury* moved the insertion of a clause, to the effect that trustees who were empowered to invest trust money in real property should be allowed to invest it in mortgage debentures.

Lord *Redesdale* opposed what he regarded as so perilous a change.

Lord *St. Leonards* also expressed his disapproval of the clause.

Lord *Cranworth* moved the omission of the words from the clause "or the major part of them." As the clause stood he thought it would prove wholly inoperative.

The Earl of *Malmesbury* said he was much obliged to the noble and learned Lord for his suggestion. The object was to give every security possible. Under all the circumstances of the case he would assent to the amendment.

Lord *Redesdale* was strongly opposed to the clause, and was determined to divide the House upon it.

The clause as amended was negatived without a division.

The report was then agreed to.

UNION ASSESSMENT COMMITTEE ACT AMENDMENT BILL.

Their Lordships went into committee upon this bill.

The clauses in this bill were agreed to, and it went through committee.

ECCLIESIASTICAL COURTS AND REGISTRIES (IRELAND) BILL.

On the motion of the Archbishop of *Armagh*, their Lordships went into committee on this bill.

The Bishop of *Oxford* said his right rev. friend the Bishop of *Exeter* had given notice of a motion that a select committee be appointed to consider and report on the modes of appeal proposed in the 83rd, 84th, and 85th sections of the bill, but he had been unable to remain in the House until the discussion came on. He had become exhausted in his efforts to remain; but in consequence of the right rev. the Primate of Ireland having intimated his intention not to go on with these clauses to-night, he (the Bishop of *Oxford*) would not move the amendment of his right rev. brother, and would withdraw the amendment of which he himself had given notice.

The Earl of *Belmore* objected to any clause in the law affecting the Irish branch of the United Church which would not deal with it as it would with the English branch. Such a procedure would be contrary to the Act of the Union.

The 83rd, 84th, and 85th clauses were omitted, and the remaining clauses were agreed to.

The bill passed through committee.

THE PUBLIC SCHOOLS BILL.

The amendments introduced into this bill were reported to the House.

THE SCOTTISH EPISCOPAL CLERGY DISABILITIES REMOVAL BILL.

The amendments on this bill were also reported, and agreed to.

THE COURT OF JUSTICIARY (SCOTLAND) BILL.

This bill was read a third time, and passed.

HOUSE OF COMMONS.—Thursday, June 9.

COLLECTION OF TAXES BILL.

After some discussion, this bill was passed through committee.

WRITS REGISTRATION (SCOTLAND) BILL.

On the order of the day for resuming the adjourned debate on the second reading,

Sir *J. Fergusson* moved that the bill, the object of which was to remove the local registers to Edinburgh, be read a second time that day three months.

After a debate, in which the measure was opposed by Scotch members with considerable warmth,

The Lord *Advocate* said, he believed that the measure would prove beneficial; but without more support than he had received, he could not look forward to its successful operation. He was bound to defer to the opinions adverse to the measure, which had been expressed in the course of the debate; and he had come, he owned most reluctantly, with regard to what he deemed a most important reform in the law of Scotland, to the opinion that a little more time was desirable for the consideration of the measure. He hoped that it would be considered, and considered on its merits. He moved that the order for the second reading be discharged.

Sir *J. Fergusson* withdrew his amendment, and the order of the day was discharged.

CHURCH BUILDING AND NEW PARISHES ACTS AMENDMENT BILL.

On the motion of *The Attorney-General*, the order for the second reading of this bill was discharged.

Friday, June 10.

COMMITTEE ON PRIVATE BILLS.

On the motion for going into supply,

Lord *R. Cecil* moved, "That in the opinion of this House, it is expedient that the duty of ascertaining the facts upon which legislation in respect to private bills is to proceed should be discharged by some tribunal external to the House."

After some debate, the motion was withdrawn.

Monday, June 13.

CHURCH OF ENGLAND ESTATES BILL.

Mr. *Walpole* asked the hon. member for Poole whether he proposed to proceed with the Church of England Estates Bill on Wednesday next, and if not, on what day.

Mr. *H. Seymour* said he had been informed since he had brought in that bill that the Home Secretary intended to introduce a similar one. He should, however, persevere with his bill, but he should not bring it on before Wednesday week.

UNIFORMITY ACT AMENDMENT BILL.

Mr. *Walpole* asked the right hon. member for Kilmarnock whether he proposed to proceed on Tuesday evening with the Uniformity Act Amendment Bill; and if so, what was the latest hour at which that bill would be taken.

Mr. *Bouverie* said, he proposed to postpone it to the 21st instant.

RAILWAYS CONSTRUCTION FACILITIES BILL.

Mr. *Whalley* moved that the 9th clause be struck out.

Lord *Galway* moved that the chairman do report progress.

After some words from Mr. *M. Gibson*,

The question having been put, the chairman was ordered to report progress.

The House then resumed.

STREET MUSIC (METROPOLIS) BILL.

This bill was read a second time.

Tuesday, June 14.

THE FACTORY ACT EXTENSION BILL.

Mr. *Bruce*, in moving the second reading of this bill, said it had been introduced in consequence of the report of a commission which had been appointed by the late Sir G. C. Lewis to inquire into the employment of young children in factories. That commission inquired into the state of the children and young persons employed in lucifer-match making, the manufacture of percussion caps, and paper staining, pottery, and other trades, and they recommended that provision should be made that all places where those trades were carried on should be properly guarded, and effectually cleansed; that special means should be provided against danger; and that the provisions of the Factory Act should be applied to those trades.

After some debate, the bill was read a second time.

Lord *Ingestrie* said, he would not press a motion which he had made for referring the bill to a select committee.

THE YORKSHIRE ASSIZES.

Mr. S. Estcourt gave notice that he should on Monday next, on going into committee of supply, move an address to her Majesty, praying that the report of the Privy Council with regard to the transference of the assizes from York to Leeds should be reconsidered.

AUSTRALIA.—EXPULSION OF TICKET-OF-LEAVE MEN.

Mr. Blake asked the Secretary of State for the Colonies, whether his attention had been drawn to the notice given by Mr. Kye, M. P. for East Melbourne, of his intention to move the following resolution in the Legislature of Victoria:—"To move that this House will resolve itself into a committee of the whole, to consider the propriety of presenting an address to his Excellency the Governor, requesting that the sum of 5000*l.* might be placed on an additional estimate for the purpose of defraying the expenses of exporting to Great Britain ticket-of-leave men during 1864, not exceeding 300 in number;" and, in the event (as appears to be generally anticipated in the colony) that the resolution should pass before the dispatch of the next mail, what course the Home Government are prepared to adopt.

Mr. Cardwell said, he had not received any official communication from Victoria even that the notice of the motion to which the hon. gentleman referred had been given. He was sure the hon. gentleman would not expect him to anticipate the adoption of such a resolution by the Legislature of Victoria, and still less to state what course it might be necessary for her Majesty's Government to take in the event of that resolution being adopted.

Wednesday, June 15.

FORFEITURE OF LANDS AND GOODS BILL.

Mr. C. Forster, in moving the second reading of this bill, said that he regretted the subject had not been dealt with at the time of the passing of the Criminal Acts Amendment Bill. The present law of forfeiture was unjust in principle, and had its origin in the barbarous enactments of feudal times. It had been repudiated in the Code Napoleon and other modern codes, and it was matter of surprise to most men that it had so long been allowed to remain on the English statute book. He did not apprehend there would be any difficulty, if the bill became law, in the matter of compensation to certain corporations who had claims to the goods of convicted felons. As the crime of treason was of rare occurrence, he had not included in the bill cases of attainder, but had limited it to ordinary cases of felony. He hoped the House would bear in mind the anomalous distinction between felony and misdemeanor. Felony was followed by forfeiture, but misdemeanor was not, though misdemeanor comprehended offences of a more injurious nature than the large majority of cases of felony that came before the courts. A labourer stole a lump of coal, and because his offence came under the head of felony, he was told that all his goods and chattels were forfeited to the Crown, though his punishment in other respects was but nominal; while the banker who was convicted a few years ago, and whose frauds had been the ruin of some persons, was told that his case was a misdemeanor, and was not punishable by forfeiture of his goods. We advocated the repeal of the law of forfeiture on the ground that the punishment inflicted by a criminal court ought to be adequate to the offence, and no more. He might allude to the case of Kirwan, convicted at Dublin, in 1852, of murder. The evidence was not deemed conclusive to warrant his execution. His sentence was commuted into one of banishment, and the whole of his property was confiscated to the Treasury, although there were persons who had the strongest claims to it. If the House wanted a further proof of the injustice of this law, he would refer them to the report of Wilkin, appended to a return relating to certain criminal statistics made to the House on the motion of the hon. member for Dumfriesshire (Mr. W. Swart). The House would perceive, that in respect to this law of forfeiture, the Treasury was placed in the very undignified position of an official assignee to the convict's estate, collector of his debts, and then paying the net receipts into the Consolidated Fund. If the law was so administered with regard to the really guilty, let the House consider what its effect was upon the innocent. He believed that the House had never comprehended the vast amount of injustice and oppression that were practised under this law, or they would never have permitted its existence so long. It was well

known that the practice generally was amongst innocent persons charged with serious offences, involving forfeiture, to transfer their property to a third party, in order to save it if possible for their families in the event of an adverse verdict, and he believed it was by no means an uncommon thing for the party to whom the property had been thus conveyed in trust, to claim an absolute right over such property, even after the acquittal of the accused. Having mentioned several cases of extreme hardship and injustice under this law, the hon. gentleman called attention to the case of Mr. Bewicke, which would be remembered as a lasting monument of suffering innocence and grievous oppression. He said that, considering the many just and humane modifications which had been of late years made in our criminal law, he could not but entertain the most sanguine anticipations that the British Parliament would not refuse to abolish the law of a barbarous age, and to place our criminal jurisprudence upon a footing more consonant and in harmony with that humane and enlightened legislation which had of recent years characterised its proceedings.

Mr. W. Ewart seconded the motion.

Mr. Hunt opposed the bill, and said, that if the hon. member had proposed a select committee to consider what alteration of the law was necessary, he would have voted with him. But the bill as it stood was a crude piece of legislation, incapable of being put into a satisfactory shape, and he, therefore, moved that it be read a second time that day three months.

After some debate, the amendment was withdrawn, and the bill was read a second time.

COSTS SECURITY BILL.

Mr. Butt moved the second reading of this bill. He said, that at present an Englishman suing a person in the Irish courts was obliged to give security for costs, and the same thing was required of an Irishman suing an Englishman in the English courts. This was much complained of by the mercantile community. He proposed by the bill that an Englishman should be able to sue in the Irish courts on the same terms as he sued in the English courts, and that an Irishman should have the power of suing in the English courts upon the same terms as he sued in the courts in Ireland.

Mr. Whitelaw moved that the bill be read a second time that day three months.

After some debate, the House divided, and the numbers were—

For the second reading	..	..	..	90
Against	..	..	..	64

Majority in favour 35

COUNTY VOTERS REGISTRATION BILL.

This bill was read a second time.

The committee was fixed for Wednesday.

APPEAL IN CRIMINAL CASES ACT AMENDMENT BILL.

The second reading of the bill was fixed for the 6th July.

SERVANTS HIRING (SCOTLAND) BILL.

This bill passed through committee.

ELECTIONS COMMITTEE BILL.

The debate on this bill stood adjourned.

COUNTY CONSTABULARY SUPERANNUATION BILL.

This bill passed through committee.

SHEFFIELD WATERWORKS (BRADFELD INUNDATION)

STAMP DUTIES ON DOCUMENTS.

The report on this bill was agreed to.

Parliamentary Reports and Papers.

ANNUAL REPORT OF THE COMMISSIONERS OF IRISH POOR LAWS, 1864.

THE Annual Report of the Commissioners for administering the Laws for the Relief of the Poor in Ireland has just been delivered.

There seems from the Report to be a laudable desire, both on the part of the commissioners and of the guardians of unions, to avoid unnecessary expenditure in litigation.

In the Appendix to the Report is a copy of a manual prepared under the authority of the commissioners, for the purpose of enabling the guardians of unions to deal more readily with the questions of chargeability on electoral divisions, which often come before them in the execution of their duty. "The appeal," say the commissioners in the Report, p. 11, "against the decisions of the board of guardians in these cases, is subject to our assent; and although we have never refused such assent when pressed for by the parties competent to appeal, no such appeal has ever gone to trial in the course of the twenty years during which this part of the poor law has been in operation." The guardians of unions being desirous to avoid the expense of litigation, have taken advantage of the condition attached, as above mentioned, to the privilege of appeal, to apply to the central office for advice in all doubtful and difficult cases, and thus far a very unsatisfactory description of poor-law expenditure has, so far, been avoided. The present publication (the manual) gives at one view all the provisions bearing on the chargeability of electoral divisions, which are scattered through the original Irish Poor-law Act, and the Amendment Acts; and is followed by a selection from the precedents accumulated since the passing of the act 6 & 7 Vict. c. 92, which gives the right of appeal.

SIXTH ANNUAL REPORT OF THE GENERAL BOARD OF COMMISSIONERS IN LUNACY FOR SCOTLAND.

THIS Report seems on the whole to be satisfactory, and to prove that some improvement has taken place in Scotland in the treatment of the insane.

The Report, however, shews that, with regard to single patients, much still remains to be done. Further powers should be given to the commissioners; and where patients, kept in private houses, are treated with positive cruelty, or with neglect amounting to cruelty, the persons so treating them should be punished by the law, if it can reach them; or if it cannot, an act ought to be passed similar to the 16 & 17 Vict. c. 95, under which Samuel Porter was indicted and convicted at the last Cornwall Assizes, for the wilful neglect of his lunatic brother.

The commissioners say, that they have from time to time experienced considerable difficulty in removing to asylums pauper lunatics whom they did not consider fit patients for private dwellings, from the hesitation of parochial medical officers to grant the necessary certificates of insanity. They consider, however, that this hesitation arises more generally from an imperfect knowledge of insanity, and an incorrect appreciation by these officers of their duties, than from any wish improperly to impede the removal of the patients. (P. xxiv).

The commissioners, moreover, state that a considerable degree of unwillingness exists among the parochial authorities, more especially in country parishes, to place their pauper lunatics in asylums, from the fear of their detention being unnecessarily prolonged; and for this reason, among others, they consider it extremely desirable that measures should be adopted for bringing the mental condition of patients in asylums periodically under view, for the purpose of determining in what cases removal to private dwellings might be properly undertaken. (P. xxvi).

It seems, moreover, that where single patients are not under the sheriff's order, and not in receipt of parochial relief, the commissioners have little or no authority to interfere; nor even in cases of gross ill-usage of lunatics by those who have care of them, do they appear to have power, or, at any rate, inclination, to direct proceedings to be taken for their punishment. Thus, the commissioners say, "Although

our statutory powers do not authorise us to visit single patients who are not under the sheriff's order, and not in receipt of parochial relief, we have abundant proof that the condition of such patients is very frequently most deplorable, especially in families which are little removed above pauperism. In cases of this kind we have frequently succeeded in introducing an improvement, by prevailing on the parochial board to place the patients on the poor roll; but in others, all our efforts to improve their condition have, from various causes, failed. The amount of wretchedness to which such patients are subjected can only be fully realised by personal inspection."

The following, amongst other cases, is printed in the Report:—"A. C.—By no description can I convey to the board an idea of the filth, discomfort, and disorder of the room in which this man passes his life. In the sense of being completely neglected, he is positively ill-used, or treated with cruelty. His sister promises immediate amendment, and requests I should call again before leaving the county, to be able to report the changes."

The commissioners observe, that it seems to have been the intention of the Legislature that the sheriff should have authority to interfere in such cases, on being made cognisant of their existence by the board, and that he should have power of ordering removal to an asylum. But as the act authorises this procedure only when the patient has "been detained beyond the period of a year after the malady had become apparent and confirmed, and when it has been such as to require, during any part of that period, coercion or restraint," it is evident that removal could be enforced in only a very small proportion of cases.

Again: "Although, by sect. 41 of the Lunacy Act, it is enacted, that no lunatic shall be kept in any private house, unless such house shall be the dwelling-place or temporary private lodging of such lunatic, the commissioners have abundant evidence, that a large number of lunatics are boarded out illegally."

The commissioners say that, as they had no knowledge that patients so detained were cruelly or harshly treated, they decided, in our opinion improperly, to take no further steps in the matter.

We cannot but think, that the law in such cases ought to be strictly carried out; that laxity on the part of the commissioners in enforcing its provisions, will lead to many abuses, or rather will allow the continuance of abuses of long standing, which by more energetic conduct on their part might be suppressed.

With regard to establishments for the reception of lunatics, the commissioners call attention to the power which the law is understood to place in the hands of the person at whose instance a patient has been sent to an asylum. Until recovered, he cannot be removed without the concurrence of this person, and from him the superintendent takes his instructions as to what visitors shall be admitted. It is obvious that great powers, capable of great abuse, are thus lodged in the hands of the person at whose instance the patient is confined. (P. xxxii).

This evil seems, to a certain extent, to be provided for by the 47th clause of the Lunacy Act, requiring a refusal of admission to a patient to be transmitted to the board; but this clause does not appear to be effectual to prevent the evils mentioned by the commissioners.

Another evil to which the commissioners allude is as follows:—"The statute permits, that one of two medical certificates on which a patient is placed in an asylum, and also the certificate of emergency, on which he may be detained for three days without the sheriff's order, may be granted by the superintendent of the asylum into which he is admitted, if not a private

asylum. By this provision, only one extraneous medical certificate is required for the permanent detention of a patient in any public district or parochial asylum; and a certificate of emergency, granted by the superintendent of any such asylum, is sufficient authority for detaining a patient under his own care for three days.

The first of these provisions the commissioners consider to be objectionable, not because it involves any great risk of the confinement of a sane person as a lunatic, but because it places the superintendent in a false position in relation to his patients, on many of whom, the knowledge that they are detained under the certificate of the superintendent, in whose care they are placed, cannot fail to exercise a deleterious influence.

There is some risk, too, that the superintendent may be warped in his judgment of the case, by having committed himself to an expression of opinion before he had an opportunity of carefully studying its features. (P. xxxiii).

The power of probationary discharge of patients, under the 25 & 26 Vict. c. 54, s. 16, has been found of great service, by promoting the discharge of doubtful cases, and facilitating the recourse to change of scene. (Ib).

The Report contains some interesting observations on the lunatics in establishments, in public, private, and parochial asylums, on the lunatic wards of poor houses, and on dangerous, criminal, and alien, lunatics.

Law Societies and Institutions.

SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.—Monday, June 6, 1864.—The Right Hon. Lord Brougham in the chair. The minutes of the previous meeting were read and confirmed. A letter was read from Mr. Pitt Taylor, calling attention to his observations appended to the Report of the Royal Commissioners on the State of the County Courts (1855). The Report of the Standing Committee on the County Courts Acts Amendment Bill was read. Moved by Mr. Henry Wordsworth, seconded by Mr. Serjeant Pulling—"That the Report now read be received and entered on the minutes, and be circulated among the members." After a discussion, in which Mr. Henry Robinson, Sir Eardley Wilmot, Mr. Rayner, Mr. Palmer, Mr. Burch Rosher, Mr. Hastings, and the Chairman took part, the resolution was put and carried. A memorial addressed to the Lord Chancellor on the subject of the Bankruptcy Law was, on the motion of Mr. Hastings, referred to the standing committee of the department for their consideration. The meeting then adjourned.

The annual meeting of the Department of Jurisprudence and Amendment of the Law will be held at the rooms of the society, 3, Waterloo-place, Pall-mall, S.W., on Monday next, the 20th inst., when the Report of the standing committee on the proceedings during the year will be presented. Lord Brougham will take the chair at eight o'clock.

The annual dinner of the department is fixed to take place on Saturday, the 2nd July. Members intending to be present are requested to give their names to the assistant secretary.

SUMMARY OF THE REPORT OF THE STANDING COMMITTEE OF JURISPRUDENCE AND AMENDMENT OF THE LAW, ON THE COUNTY COURTS ACTS AMENDMENT BILL.—The Standing Committee of Jurisprudence and Amendment of the Law has made a valuable Report on the County Courts Acts Amendment Bill, of which the following is a short summary:—

As to the 17th section, which provides that no action shall be brought for ale or beer when drunk on the premises, the committee observe that the policy of this provision can scarcely be doubted.

The committee observe, that the consideration of two important portions of this bill—the limitation to a period of one year of actions for sums not exceeding 20*l.*, and the abrogation of the power of the county court judges to commit to prison for default in satisfying a judgment, the defendant having had means of payment, must depend in a great measure on the question whether it is advisable that facilities should be given to the working classes for obtaining credit. There is no doubt that there are other classes who would be more or less affected by these proposed enactments; but, in the main, it is to that large portion of our population which subsists by weekly wages that they would practically apply.

Upon this general question of credit, the committee offer no decided opinion; but they wish to point out, that if it were thought desirable to abolish credit, the bill does not go far enough, and that the enactment proposed by Mr. Sheriff Hallard (purposing to abolish all actions for the necessities of life where the amount of each transaction is under 20*s.*), or that suggested by Lord Cranworth, of abolishing all actions under 3*l.*, would be much more effective; whereas, if it be desirable that the working man should be able to obtain credit—or, in other words, to give security to his creditor—then the bill goes too far, by abolishing what seems to be the only sure means of obtaining payment.

A perusal of the answers given by the sixty county court judges to the Lord Chancellor, will shew their almost unanimous opinion of the necessity for retaining the present power of imprisonment. The judges bear testimony to the moderation and mercy generally shewn by the creditor; and that the harsher provisions of the law were abolished by an act passed some years since at the instance of the present Solicitor-General^o. These considerations will probably lead to the conclusion, that this power of imprisonment is a weapon equally merciful, cheap, and efficient for the maintenance of justice in small debt courts, operating as it does over a wide area of indebtedness, by a very small amount of actual bodily suffering.

The committee entertain grave doubts whether this proposed attachment of wages would ever be tolerated by employers, or be effectual against the dishonest debtor; and they are strengthened in their doubts by their knowledge of the strong feeling which exists in Scotland against a somewhat similar system, long in force in that part of the kingdom. They would suggest, that it might be advisable to obtain by means of a select committee, from employers of labour and others, some definite information upon the subject.

The insolvency part of the bill seems to be based on the same equitable principle, of a rateable division of the property of an insolvent debtor among all his creditors, as has been established with regard to the upper and middle classes; and to this principle no objection, in theory at least, can be urged. It must, however, be borne in mind, that legislation, which is just for one class, is often inapplicable to another; and it may be doubted whether facile insolvency is wholly equitable towards the creditors of a class who virtually are without assets, extremely prone to run into debt, and, as the figures alluded to in the Report testify, seem to have a natural opposition to spontaneity of payment.

With regard to that part of the bill which relates to

the limitation of suits, the committee fear that a reduction of the period to one year for sums not exceeding 20*l.*, is too sudden and extreme a measure.

The department has already passed a resolution, approving of the principle of conferring an equitable jurisdiction on the county courts, and the committee have only to observe, that this object will be to some extent carried into effect by the bill. It may be questioned, however, whether the power of granting an injunction should not have been added.

With regard to sects 34 to 39 inclusive of the bill, the committee observe, that it has been stated that in undefended causes, where the debtor resided at a distance, the proceedings in the superior courts are cheaper, and, at the same time, far more efficacious and expeditious than in the county courts. In the face of these statements, the committee certainly think it undesirable that so sweeping a provision should be introduced as a mere incidental accessory to a portion of this bill.

REFORMATORY AND REFUGE UNION.—On Thursday evening a conversation was held at the society's rooms, in Suffolk-street, Pall-mall East, in furtherance of the objects promoted by the Discharged Prisoners' Relief Committee; the Earl of Shaftesbury, K.G., in the chair. Amongst the company present were—Earl Ducie; Lord Ebury; Sir Walter Crofton, C.B.; Mr. Hanbury, M.P.; W. R. Bodkin, Esq.; Mr. and Mrs. Beamish Baker; Rev. S. Hornbrook; Colonel Colville; Captain Brookes; Rev. J. and Mrs. Owen; Mr. G. H. Oliphant Ferguson; Colonel and Mrs. Edwards; Mr. Robert Baxter; Rev. Sir Nicholas and Lady Chinnery; Lady Anna Maria and the Misses Tellerbach; Mr. and Lady Isabella Whitbread; and Colonel Henderson, the director of county prisons of Ireland, &c. Specimens of prisoners' work in the Corkin-street prison were displayed in one of the ante-rooms. The object of the society is to relieve criminals on their discharge from prison. Mr. T. L. Murray Browne, the hon. secretary to the Discharged Prisoners' Relief Committee, made a detailed statement to the company, from which it appeared that the committee commenced its operations in the beginning of March, and from that time to the end of April they had received from the county of Middlesex 10*l.* 12*s.* 6*d.* in "star money," to which the prisoners were entitled for good conduct. They had also received an additional grant from the same source, amounting to 50*l.* 7*s.*, and the total expended on prisoners, including star money, was 44*l.* 3*s.* 6*d.* The number of prisoners placed under the care of the committee in the two months was seventy. Of this seventy no less than fifty-four had obtained employment, whilst the others were not to be regarded as cases in which the efforts of the committee had been unsuccessful. Indeed, the number was small where the committee had been unable to obtain employment for prisoners, though in some instances obstacles presented themselves which the committee could not control. Of the fifty-four for whom the committee had found employment, twelve had been sent to sea, while the remainder were put to various trades. The expenses incurred were almost confined to those of the agent; the printing was done in the prison itself. The company was addressed by Sir Walter Crofton, C.B., Colonel Henderson, Lord Ebury, &c., and a resolution was passed to the effect, that the success which has attended the recent efforts to relieve criminals on their discharge from prison, under the authority of the Discharged Prisoners Aid Act of 1862, proves that it is possible, both as regards employers and the men themselves, to restore such persons to honest life, and warrants the extension throughout the country of the plans pursued in London; and this meeting trusts that the committee

of the Reformatory and Refuge Union, under whose auspices the work has been carried on, will take steps for the establishment of relief committees in connexion with the various borough and county gaols. The proceedings closed with a vote of thanks to the noble chairman.

Legal Education.

OXFORD, June 9.—In a congregation held this day, the following degree was conferred:—

Bachelor in Civil Law.—Sidney Godolphin A. Shipyard, Magdalen Hall.

The statute abolishing the Teachership of Indian Law was vetoed by the Vice-Chancellor.

CAMBRIDGE, June 9.—At a congregation held this day, the following degrees were conferred:—

LL.D.—Herbert Broom, Trinity College.

Master of Laws.—Jacob Howell Pattenon, St. John's College.

LL.B.—R. W. Allsopp, Emmanuel College.

Appointments.

INDIA OFFICE, June 7.—The Queen has been pleased to appoint J. B. Phear, Esq., Barrister-at-Law, to be a judge of the High Court of Judicature at Fort William, in Bengal.

WHITEHALL, June 9.—The Queen has been pleased to appoint R. J. Lane, Esq., one of her Majesty's counsel, to be one of the Special Commissioners for Irish Fisheries, *vice* W. O'Connor Morris, Esq., resigned.

Legal News of the Week.

At a council held on Friday, June 10th, at Windsor Castle, an order was affirmed, constituting Leeds an Assize Town for the West Riding of Yorkshire.

The magistrates of Middlesex had a meeting on Tuesday last, Mr. Pownall presiding, when Mr. Serjeant Payne moved, and Mr. Harwood seconded, that the magistrates should petition Parliament against the Prisons Bill, now before the House of Commons, on the ground that it would empower the Secretary of State to appoint Roman Catholic chaplains to the gaols against the wish of the magistrates. The motion was carried by a large majority, and a form of petition was adopted, and ordered to be forwarded to Mr. Newdegate for presentation.

Mr. James Edward Davis, of the Oxford Circuit, will, it is reported, succeed Mr. T. B. Rose as stipendiary magistrate at Stoke-upon-Trent.

SENTENCE OF DEPOSITION ON BISHOP COLENZO.—Messrs. Brooks & Dubois, proctors for the Metropolitan Bishop of Capetown, served on Tuesday a copy of the sentence of deposition on Bishop Colenso, in which the Metropolitan says—"We do, accordingly, decree and sentence the said Bishop of Natal to be deposed from the said office as such bishop, and prohibited from the exercise of any divine office within any part of the Metropolitan Province of Capetown."

WINDSOR CASTLE, June 10.—The Queen was this day pleased to confer the honour of Knighthood upon William Shee, Esq., one of the judges of her Majesty's Court of Queen's Bench.

CIRCUITS OF THE JUDGES.

(The Lord Chief Baron POLLOCK will remain in Town).

SUMMER CIRCUITS, 1864.	NORTHERN.	N. WALES.	S. WALES.	WESTERN.	HOME.	NORFOLK.	MIDLAND.	OXFORD.
	CJ Cockburn B. Pigott	L. C. J. Erie	J. Crompton	J. Williams J. Byles	B. Martin J. Willes	B. Bramwell B. Channell	J. Blackburn J. Keating	J. Mallow J. Shee
Thursd., July 7	Appleby	.....	Cardigan	.....	.....	.....	.....	Abingdon
Saturday.... 9	Durham	.....	.....	Winchester	.....	.....	Warwick	Oxford
Monday.... 11	.....	.....	Haverfordw.	.....	Hertford	Oakham	.....	.....
Monday.... 11	.....	.....	[ & Town	.....	.....	Leicester and	.....	.....
Wednesday... 13	.....	.....	.....	.....	.....	[Borough	.....	Worcester &
Thursday.... 14	Newcastle &	.....	.....	.....	Chelmsford	Northampton.	.....	[City
Friday.... 15	[Town	.....	Cardmarthen	Salisbury	.....	.....	.....	.....
Saturday.... 16	.....	.....	.....	.....	.....	.....	Derby	.....
Monday.... 18	.....	.....	.....	.....	.....	Aylesbury	.....	Stafford
Tuesday.... 19	Carlisle	Newtown	Cardiff	Dorchester	.....	.....	.....	.....
Wednesday... 20	.....	.....	.....	.....	Lewes	.....	.....	.....
Thursday.... 21	.....	.....	.....	.....	.....	Bedford	Nottingham	.....
Friday.... 22	Lancaster	Dolgelly	.....	Exeter & City	.....	.....	[ & Town	.....
Monday.... 25	.....	Carnarvon	.....	.....	Maldstone	Huntingdon	.....	.....
Tuesday.... 26	Manchester	.....	.....	.....	.....	.....	Lincoln and	.....
Wednesday... 27	.....	.....	.....	.....	.....	Cambridge	[City	Shrewsbury
Thursday.... 28	.....	Beaumaris	.....	.....	.....	.....	.....	.....
Friday.... 29	.....	.....	.....	Bodmin	.....	.....	.....	.....
Saturday.... 30	.....	.....	Brecon	.....	.....	.....	York	Hereford
Monday, Aug. 1	.....	Ruthin	.....	.....	Guildford	Norwich and	.....	.....
Wednesday... 3	.....	.....	.....	Wells	.....	[ City	.....	Monmouth
Thursday.... 4	Liverpool	Mold	Presteign	.....	.....	.....	.....	.....
Friday.... 5	.....	.....	.....	.....	.....	Ipswich	.....	.....
Saturday.... 6	Chester &	Chester &	Leeds	Glouc. & City
Tuesday.... 9	[City	[City	Bristol

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T. B. SPRAGUE, *Actuary and Secretary.*

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	£	£		Years.
982	5000	1234	1857	40
1558	5000	1157	1857	45
6	5000	1693	1857	44
941	2500	771	1858	68
646	5000	1742	1858	54
13	5000	2091	1859	61
831	5000	1433	1860	37
870	4000	1438	1860	50
643	3000	1149	1860	57
2871	5000	907	1861	36
2907	5000	1180	1862	36
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309	5000	1899	1862	40

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NOTICE.

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THE JURIST.

LONDON, JUNE 25, 1864.

THE current of judicial decisions has long flowed against deeds of arrangement, but there are now indications of its setting strongly in the opposite direction. Within the last few weeks five of these deeds have been held to be good, whilst the tone and manner of the Courts have altogether changed with regard to their treatment; and the judges are now as astute to ignore, as they formerly were to discover, faults in these deeds.

It is not necessary, or perhaps advisable, to speculate here on the why or the wherefore of this metamorphosis of the judicial mind: changes as sudden have heretofore occurred and may recur again; but it may be permitted to us now to inquire whether it would not have been much better if more attention had been bestowed upon the predictions in 9 Jur., N. S., part 2, p. 49, of the flood of litigation that would, as we then saw, ensue, and that has actually, though uselessly, followed the ill-drawn arrangement clauses of the Bankruptcy Act of 1861.

It may be useful now again to take up at the point where we then left off—our consideration of the decisions on this branch of the law, in order that our readers may determine for themselves whether this reaction in the judicial mind of which we have above spoken, will suffice to reconcile and bring into harmonious working the antagonistic sentiments and interests of the legal and commercial world in these matters, or whether a still more direct and definite interposition of the Legislature may not be needed before deeds of arrangement secure to creditors all that the framers of the last Bankruptcy Act promised to them.

When we formerly wrote, *Walker v. Adcock* (8 Jur., N. S., part 1, p. 519) and *Foot v. Wood* (9 Jur., N. S., part 1, p. 178) had been only just decided. In the former, a "cessio bonorum" was held indispensable; and in the latter, a clause providing for the indemnity of the debtor from any liability on bills of exchange—a clause which the creditors had thought reasonable, but which the judges thought unreasonable, was held altogether to invalidate one of these deeds. These two cases have been the archetypes of numerous subsequent decisions, although *Walker v. Adcock* has been less followed than *Foot v. Wood*. Indeed, in the case of *Clapham v. Atkinson* (10 Jur., N. S., part 1, p. 358), two judges of the Queen's Bench, Mellor and Blackburn, preferred to hold with Lord Justice Turner in *Ex parte Rawlins* (9 Jur., N. S., part 1, p. 1183), that a deed that did not contain any cessio bonorum might be perfectly good and valid; and only on last Tuesday the Exchequer Chamber affirmed the judgment. Unreasonable covenants, however, have been found in abundance; and in *Inglebach v. Nichols* (9 Jur., N. S., part 1, p. 1015); *Nicholson v. Potts* (4 N. R. 71; 10 Law T., N. S., 192); and *Balden v. Pell* (10 Law T., N. S., 493; S. C., 4 Weekly Rep. 186), the unreasonable covenant was

the same as in *Foot v. Wood*. It is true, that in *Nicholson v. Potts*, Willes, J., suggested, that for "unreasonable" the word "unequal" ought to be substituted, but the appositeness of the suggestion, as regarded the covenant then before the Court, is not very evident. In *Leigh v. Pendlebury* (10 Jur., N. S., part 1, p. 296) clauses, that creditors might be required to verify their debts, or lose their composition, and that creditors whose debts were less than 10*l.* should be paid in full, were held unreasonable covenants. In *Dell v. King* (10 Jur., N. S., part 1, p. 427), a covenant that any creditor suing for a debt comprised in the deed should forfeit it, was held unreasonable; and it was stated by the Court in their judgment, that the debtor had no right to make his creditors enter into any covenants; and a clause, declaring that covenants contrary to the statute should be considered inoperative, was held to be itself nugatory. In *Dewhurst v. Kershaw* (1 H. & C. 726); *Copeman v. Hart* (14 C. B., N. S., 91); and *Armitage v. Baker* (10 Law T., N. S., 526), clauses requiring creditors to assent within a certain time, on pain of forfeiture of their debts, or of being deemed to assent, were held unreasonable. In *Hidson v. Barclay* (4 N. R. 340; 12 Weekly Rep. 883), covenants that creditors should not negotiate bills without indorsing thereon a memorandum of their assent to the deed, that the partners and executors of the creditors should not sue the debtor, and that anything in the deed not authorised by the statute should be obligatory only on those who executed the deed, were all held unreasonable.

On the other hand, in *Strickland v. De Mattos* (10 Law T., N. S., 59), clauses providing for the payment of the costs of deeds and inspectors prior to dividends, for the verification of their debts by the creditors, for setting apart dividends to accumulate, and for the abrogation of all provisions that might be considered at variance with the Bankruptcy Act, were all held reasonable. In *Dewhurst v. Jones* (12 Weekly Rep. 885; 10 Law T., N. S., 538), an absolute unconditional release of debts, in consideration of a covenant by a stranger (to whom the debtor's property had been assigned) to pay a composition, was held perfectly reasonable. So, in *Stons v. Jellicoe* (12 Weekly Rep. 922), a composition deed, by which the debtor covenanted with a trustee, and not with his creditors, to pay him for seven years a certain sum quarterly, for the benefit of the creditors, was held to be reasonable.

It will be observed, that in *Strickland v. De Mattos*, two clauses were held reasonable which in former cases had been held to be unreasonable, so that uniformity of decision, with a view to which questions of reasonableness have usually been left to a judge rather than to a jury, has not in these cases been yet reached. What is reasonable in fact or law is certainly not always confided to the most reasonable tribunal; gross negligence in an attorney is a question for the jury, whilst reasonable cause for arrest is left to the judge; and we are not sure, notwithstanding the opinion of Abbott, C. J., in *Smith v. Doe d. Jersey* (2 Br. & B. 592), that courts of law are the proper judges of reasonable clauses in deeds of arrangement. Baron

Bramwell's account (given in *Hidson v. Barclay*, ubi sup.) of the origin of this jurisdiction, such as it is, is as follows:—"The Exchequer Chamber, in *Walter v. Adcock*, has decided, that if the covenants and provisions in the deed be such as it would be unreasonable to require a creditor to assent to, a non-assenting creditor is not affected by it. By this, and many decisions following on it, we are also bound. There is no express provision in the statute to warrant this decision, and the power given to, or assumed by, the Court, ought to be cautiously exercised. It may be, nothing should be said to be unreasonable which is not 'ultra vires,' i. e. 'not relating to the debts or liabilities of the debtor, nor his release therefrom, nor to distribution, inspection, or winding up of his estate.' It may be, that in all matters within their competency, the creditors are sole judges." We shall have a word or two to remark on this hereafter.

Another head of objection to these deeds of arrangement has been, that they have not been framed for the equal benefit of all the creditors. Thus, in *Berbridge v. Abbott* (13 C. B., N. S., 507) and *Ilderton v. Castrique* (9 Jur., N. S., part 1, p. 994), deeds to which the undersigned creditors only were made parties, were held bad; and in *Dingwall v. Edwards* (10 Jur., N. S., part 1, p. 387) and *Ex parte Cockburn, re Smith* (Id. 573), deeds by which assenting creditors had a cash composition paid them on their execution of the deed, were held void against dissenting creditors, who would only get the covenant to pay the composition, and would, therefore, not have the same advantage as the others. On the other hand, in *Wells v. Hacon* (12 Weekly Rep. 790; 4 N. R. 99), extra advantages conferred upon a surety for the debtor were held not to invalidate the deed; for the Court "could not help seeing" (as they said) "that such an arrangement might be beneficial to all the creditors."

Some collateral points have also been litigated respecting these deeds; as, for instance, the manner of reckoning up the debts so as to arrive at the requisite majority, and the method of taking advantage of them, i. e. whether by plea or by application for protection from execution. And it has been decided that, in estimating the amount, both secured and unsecured debts must be taken into consideration (*King v. Randall*, 10 Jur., N. S., part 1, p. 207); whilst the presence or absence of a release indicates whether the deed may be pleaded, or can only be used to avert execution. (*Whitehead v. Porter*, 12 Weekly Rep. 742; *Ipsstones Park Iron Ore Company v. Pattinson*, 10 Jur., N. S., part 1, p. 428; *Eyre v. Archer*, 12 Weekly Rep. 916).

The decisions in equity on this subject, with one exception, have been omitted in this article; but apart from them, it is abundantly evident that the arrangement clauses in the act of 1861 have been more profitable as yet to lawyers than to creditors, and the irresistible question that now forces itself upon our notice is, whether, without some further alteration in the statute law, the same state of things will not continue, and whether good faith has been kept, or ought to be kept, in this matter with the commercial community. As we have seen, it does seem to have occurred to

some of the judges, that creditors were by this statute endued with larger powers than before, and one judge even could imagine that they might have a discretion to prefer one of their own body above the rest; but still the exercise of their discretion is to be subject to the review of the Court, and only to be allowed where the Court are of opinion that the discretion has been reasonably exercised.

Now, we are not concerned here to argue that creditors must be better judges than the courts of law and equity of the terms to be made with their debtor, and that the principle of a majority binding a minority involves of necessity an equal submission to the terms, when made, on the part of the assenting and dissenting creditors, so that the latter cannot, any more than the former, be allowed to object (save on the ground of fraud) to any of those terms; but we do say, that these were points assumed by the promoters, if not by the framers, of the act of 1861. No one can be familiar with the circumstances under which that act was brought forward, or the language used in and out of Parliament before it was passed, without acknowledging these facts; and if after all "quod voluit non dixit" is the result, there ought to be fresh legislation. The principles for which the commercial community have all along contended are, that creditors should be allowed to make their own bargain with the debtor, and that the majority should bind the minority, however unequal, unfair, or unreasonable the minority might think the bargain was, and that recourse should only be had to the law to enforce the bargain. These principles may be right or wrong, but they have never yet had their trial, and it has been promised that they should be tried; and this is all that we are at present concerned with.

Reviews.

A Manual of Forms of Procedure in Chancery, embracing chiefly the Provisions of the General Rules and Orders of the Court. By THOMAS W. BRAITHEWAITE, of the Record and Writ Clerks' Office.
[London: Edward Cox, 102, Chancery-lane, 1864.]

The object of this Manual, which appears to be very carefully and accurately compiled, is to facilitate the determination of all points as to the times of procedure in Chancery, now very numerous, and constantly arising in practice.

The author has adopted the form of a lexicon or dictionary, arranging the information upon the various subjects coming within the scope of his work, under convenient leading headings, with numerous cross-headings, for the purpose of facilitating search. Numerous useful notes are added, connected with the rules prescribing the times of procedure.

We think that the work will be of great assistance to practitioners.

A Treatise on the Fishery Laws of the United Kingdom, including the Laws of Angling. By JAMES PATERSON, Esq., M.A., of the Middle Temple, Barrister-at-Law.
[M'Millan & Co.]

MR. PATERSON has done good service to the Profession, and, indeed, to all who are interested in fisheries and fishing, by the publication of this book. The subject is one which is yearly increasing in importance,

and one which, as the author remarks in his Preface, has been hitherto prevalent among lawyers for "its confusion." The book treats of the several heads of fisheries and of fishing, and gives a compact and well-digested account of the law (common and statute) relating to each kind, and in force in Scotland and Ireland as well as in England. With respect to the property in poached fish, Mr. Paterson seems to be of opinion that it belongs to the poacher, the rule of law in such a case differing from that which prevails as to game killed on the land where it is started. Without expressing any confident opinion on the point, we do not see on what ground (looking at it as a matter of principle) the distinction rests.

The contemplative disciple of Isaac Walton will learn from this book that Isaac neglects to teach him that he is, as a general rule, a trespasser and a poacher. Innocent as he may think himself and his loved occupation, he is in fact perpetually exposing himself to penalties, to actions, and to the seizure of his rod and tackle. Anglers are, generally speaking, such quiet inoffensive characters, that landowners overlook their little trespasses, and consider them almost ornamental; but we think they should make themselves acquainted with the liabilities which Mr. Paterson's Chapter on Angling explains to them.

The book contains an excellent analytical table of contents, and a most carefully compiled index. Great labour and care have evidently been bestowed by the learned author on all parts of the work, and the result is, that an able, useful, and well-written book has been produced.

REPORT OF THE COMMITTEE ON LAW REPORTING,

Appointed at the Meeting of the Bar, held in Lincoln's Inn Hall on Wednesday, the 2nd December, 1863.

WE are informed that the following Report has been made by the Bar Committee, and that the scheme which they have prepared will be taken into consideration at a meeting of the Bar appointed by the Attorney-General, to be held on the 1st July next, at Lincoln's Inn Hall:—

The committee thus appointed were intrusted with the duty of preparing a plan for the amendment of the present system of preparing, editing, and publishing reports of judicial decisions, and were requested to report thereon to a future meeting of the Bar.

The committee have, after much discussion and deliberation, prepared the scheme hereinafter set forth, and they recommend the same for adoption.

The committee abstain from discussing in this Report the merits of the scheme, but confine themselves to a general statement of their proceedings.

The first step taken by the committee was to apply to the Benchers of Lincoln's-inn for the use of a convenient room in the new hall and buildings for the purpose of their meetings. This application was willingly acceded to by the Bench, and the committee have accordingly held their meetings in the Benchers' Reading Room at Lincoln's-inn.

At the first meeting of the committee, held on the 22nd December, 1863, they unanimously appointed Richard Paul Amphlett, Esq., Q. C., the permanent chairman of the committee. They have since held twenty-two meetings, and Mr. Amphlett has presided over every one.

At their first meeting the committee also accepted the services of Mr. James Thomas Hopwood, of Lincoln's-inn, as honorary secretary. The duties of the

secretary having increased and become onerous, the committee shortly afterwards accepted the services of Mr. William Dundas Gardner, of Lincoln's-inn, and those two gentlemen have ever since acted as joint secretaries, and have been unsparing of their time and labour in rendering valuable services and assistance to the committee.

Before entering upon the consideration of any scheme of amendment to be suggested by any of its members, the committee resolved to issue a circular to the Profession, inviting observations and suggestions; such circular was as follows:—

"The committee are anxious, in order the better to discharge the duty intrusted to them, to collect the opinion of the Profession upon the subject of Law Reporting; and for that purpose the committee are desirous of receiving any observations which you, either alone or in conjunction with others, may be so obliging as to make upon what, in your opinion, are the advantages or disadvantages of the present system; and also any suggestions, either as to the principle or details, of any amendment of the existing system which you may think desirable."

This circular was sent to the judges, and extensively distributed among both branches of the Profession. In reply, the committee received numerous and valuable observations and suggestions. Although these exhibited differences of opinion as to the proper mode of amending the existing system of law reporting, they exhibited at the same time a very general desire for amendment; and the committee have been greatly assisted in the discharge of their duties by the observations and suggestions thus received.

The committee, also, before entering upon the consideration of any plan of their own, appointed a sub-committee (consisting of the Hon. George Denman, Mr. Serjeant Pulling, Mr. Henry Matthews, Mr. Quain, and Mr. Westlake) to inquire into the mode of recording and reporting judicial decisions in the various European States, and in the United States of America.

The sub-committee undertook these duties, and reported as follows:—

"The sub-committee thus appointed have received valuable communications from a number of competent foreign jurists, and other gentlemen professionally or officially connected with the chief tribunals of the countries embraced in the inquiry, and thus conversant with the subject-matter of the reference.

"The sub-committee have by this means obtained information which they recommend to the committee as worthy of their attention.

"To begin with the system adopted in France. Every judicial decision is required to be in writing, and to be motivé, i. e. to disclose on the face of it the grounds and reasons on which it is founded; and when the signature of the President of the Tribunal has been affixed to these solemn judgments, it is the business of the greffier to see them entered on the register of the courts, and only one version of them can therefore ever legally appear.

"The records of the tribunals thus containing an authentic version of every decision, the legal profession and the public have at all times access to the register to ascertain what has from time to time been decided, and it is competent for any one to make from the register a selection of such decisions for publication. The collections of decisions by Sirey and Dalloz, and Ledru Rollin, have been thus prepared. Though these works are deservedly held in great esteem, they are not official publications, any more than any series of English law reports.

"In Norway and Sweden the judgments of the ordinary tribunals are always given in writing, and in every case entered on the protocols of the courts; and in the

supreme courts of appeal, when the votes of the judges are given separately, it is the business of the registrar of the court to enter on the records of the court, not only the final judgment or conclusion, but the grounds and reasons of the decision of each judge. Here, as in France, therefore, the records of the courts supply ample materials for the preparation of books of reports or collections of decisions, and such publications are left wholly to free trade.

"In Denmark, though it is competent for any one to take down, print, and publish reports of cases and decisions of which he has himself taken notes, the only authentic version of judicial proceedings is the entry in the *dombistocol*, under the hand of the judge, containing not only the conclusion itself to which the Court has arrived, but the facts and reasons and grounds of the decision; and from these, selections of cases which may serve for precedents are made by the direction of the Courts, though it would seem that other selections made by competent private publishers would be received with equal attention.

"In Italy all judicial decisions, whether civil or criminal, must be read aloud in open court, with the grounds in fact or law set out at length; and authentic minutes of the judicial opinions so pronounced are duly entered in the register of the court; and compilations of the principal decisions of the four Superior Courts of Cassation at Milan, Florence, Naples, and Palermo are published by voluntary editors, whose province it is to make a proper selection of cases for publication, to give an analysis of them in the head and marginal notes, and to explain or illustrate them in other annotations. These compilations only so far receive the protection of the State that a certain number of copies are subscribed for out of the public treasury. The compilation entitled '*La Legge Romana*' is a journal of judicial and administrative proceedings for the kingdom of Italy, published at short intervals (the judicial three times a week), and containing in an abridged form notes taken from the minutes in the registers of all the important cases disposed of.

"In the United States of America there is no law requiring either written decisions or a record or register of the grounds and reasons of the decisions; but the judgments are generally in writing, and in most of the States, and in the Supreme Court of the United States, there are now official reporters, remunerated by salary as well as by a portion of the profits of the publications. These reporters are generally appointed by the State, and are always removable at the discretion of the appointing power, but enjoy in the performance of their duties the same freedom as the authors of our own law reports. In the Superior Court of the city of New York, the judges publish the reports of their own decisions, choosing an editor from among themselves. As a rule, the official reports omit the arguments of counsel, and give only a narrative of the facts and the copy of the written judgments. The official publication rarely appears for many months after the judgment is pronounced, and until that time publications called the *Law Reporter* and *Law Journal* are referred to, but do not profess to give more than the most important cases. No suggestion is made that the official reporters are less efficient or more dilatory than their predecessors under the voluntary system, nor is it found that they are subject to any improper influence in the discharge of their duties; and in the State of New York the official reports are required by law to be sold at a much smaller price."

The committee, with the information they now had before them, proceeded to consider proposals for amendment.

The first proposal discussed by the committee was

a joint proposal by Mr. Serjeant Pulling, Mr. Joshua Williams, and Mr. Westlake, and was as follows:—

"The present system has arisen from the default of proper records of their own proceedings being kept by the Courts. The privilege which the Bar has of reporting comes to this, that any barrister may inform the Court of that which the Court might much better know from its own records. No remedy appears to us sufficient which does not strike at the root of the evil. It would be desirable that all judgments should be written; but this may be thought impracticable. We therefore propose as follows:—

"It should be the duty of the registrar, in all cases in which judicial opinions are pronounced, to record the names of the parties and of their counsel and attorneys or solicitors, the authorities cited, the judicial opinion or opinions delivered, and the formal judgment, order, or decree; also the substance of the pleadings and the case, and the points relied upon by counsel, wherever a mere transcript of the judicial opinions actually delivered did not render any other summary of the case, pleading, and points unnecessary.

"Each registrar should be assisted by one or more short-hand writers, whose duty it should be to take down all remarks of the judges, especially their judgments, and any remarks by counsel which may be necessary to render them intelligible.

"The short-hand writers should be allowed to furnish notes to applicants for their own profit.

"The short-hand writers' notes should be written out as soon as possible, and furnished to the registrar.

"It should be the duty of the registrar, from these notes and his own, with the assistance of the judges, the other officers of the court, and the counsel and attorneys or solicitors employed, to prepare such record of the case as aforesaid.

"This record should be printed as soon as possible by the Queen's printers, on paper of a given shape, each cause being on separate paper, and the transactions of each day being printed within a week at furthest.

"The records so printed should be published and sold at a low price, with liberty to any person to reprint them.

"The record so made should be amended by the Court, on sufficient evidence of its inaccuracy, and should be evidence in the same manner as the records of the courts now are.

"All printed pleadings and evidence should be on paper of the same size and shape with that of the records, so that the printed documents relating to each cause might be bound up, as those relating to Privy Council causes now are in Lincoln's-inn library; and copies of all such printed documents should be furnished to the libraries of the Inns of Court and the Incorporated Law Society.

"If a ministry of justice should be established, which we think very desirable, it might be charged with the preparation of an annual or semi-annual digest, and with supplying marginal notes to the record of cases, but so that such records might also be bought without such notes by those who might think it important to get them sooner."

After discussion, this proposal was negatived.

Mr. Montague E. Smith, Q. C., moved a resolution as follows:—

"That the committee recommend the principle of official reporters, such reporters to be appointed by the Lord Chancellor, and to be paid by the State; the reports to be sold under the authority of Government, compensation being afforded to existing interests."

The discussion upon this resolution was, with the

consent of Mr. Smith, postponed until it should be seen whether any scheme of amendment would be sanctioned by the committee which should not be based upon Government patronage and control.

Several proposals, in various forms, but each founded upon the principle of establishing a system of reporting under the regulation and control of the Bar, were next laid before the committee; these formed the basis of the scheme adopted. Mr. Smith's motion was, therefore, not pressed.

Mr. Dickinson moved a resolution embodying a principle applicable to any set of reports to be so established, as follows:—

"That no case reported by reporters, under such supervision and control, should be quoted from any other report, but this not to interfere with the quotation from any other report of cases not already so reported."

This resolution was negatived; the committee considering that such a restriction, although in the opinion of several of the members very desirable, should not form part of the scheme.

The following is the scheme respectfully submitted and recommended by the committee for adoption by the Bar:—

SCHEME OF REPORTING RECOMMENDED BY THE COMMITTEE.

1. The reports recommended by this committee shall be placed under the general management and control of a council composed of members to be appointed as follows:—Two by Lincoln's-inn; two by the Middle Temple; two by the Inner Temple; one by Gray's-inn; one by Serjeants'-inn; and two by the Incorporated Law Society; and, in the event hereinafter mentioned, two more to be appointed by the Lord Chancellor. The council shall include also the Attorney and Solicitor General and the Queen's Advocate for the time being as ex officio members.

2. One of the members appointed by Lincoln's-inn, the Middle Temple, the Inner Temple, and the Incorporated Law Society respectively, and one of the members (if any) appointed by the Lord Chancellor, shall retire at the end of every two years, and the members appointed by Gray's-inn and Serjeants'-inn respectively shall each retire at the end of four years from his appointment, except that, for the purpose of equalising the number retiring periodically, the first member appointed by Gray's-inn shall retire at the end of two years. All members retiring shall be eligible for re-appointment.

3. Any occasional vacancy in the council by death, resignation, or otherwise, may be filled up by a new appointment, and the member so appointed shall retire at the time when the member occasioning the vacancy would in ordinary course have retired.

4. It is desirable that the council be incorporated by Act of Parliament or charter. The council shall have the assistance of a paid secretary, and the Inns of Court shall be requested to guarantee the payment of such secretary's salary, and the office and other expenses of the council (not exceeding together 500*l.* per annum), in the proportions following, viz.:—

Lincoln's-inn	.	.	.	Two-sevenths.
Inner Temple	.	.	.	Two-sevenths.
Middle Temple	.	.	.	Two-sevenths.
Gray's-inn	.	.	.	One-seventh.

5. The reports shall be prepared by reporters under the supervision of editors, and the cases to be reported shall be carefully selected upon the principle of rejecting all cases useless as precedents, and the copy-

right shall be vested in the council, or in trustees to be named by them.

6. The reports shall be divided into three series, viz.:—

1. Appellate, being the House of Lords and Privy Council cases;
2. Equity, including bankruptcy and lunacy cases;
3. Common law, including probate, matrimonial, admiralty, and ecclesiastical cases:

with such sub-divisions (if any) of each series as the council may think desirable.

7. The common law and equity reports shall be published in monthly parts respectively, and the appellate reports as often as shall be found convenient. The November parts shall comprise, as far as practicable, every decision not before reported up to the rising of the courts for the long vacation.

8. The council shall have power, if they should find it desirable, to establish, in connexion with the permanent reports above mentioned, a weekly set of reports.

9. The staff of editors and reporters, and their salaries, shall be as follows:—

Two Editors	..	..	..	each at £600 — £1200
Reporters—				
2 House of Lords				
1 Privy Council				
3 Lord Chancellor and Lords Justices (including Bankruptcy and Lunacy)				
2 Queen's Bench (including Appeals therefrom, to Exchequer Chamber)				
8				each at £500 — £4000
2 Rolls				
2 Vice-Chancellor Kindersley				
2 Vice-Chancellor Stuart				
2 Vice-Chancellor Wood				
2 Common Pleas (including Appeals therefrom to Exchequer Chamber)				
2 Exchequer do. do.				
12				each at £400 — £4800
1 Crown Cases Reserved	..	..	..	100
1 Admiralty and Ecclesiastical	..	..	..	100
2 Probate and Matrimonial				each at £250 — 500
				2)£10,700
First moiety, see Rule 10	..	..	..	£5350

10. One moiety of these salaries (hereinafter referred to as the "first moiety") shall be paid in all events, by equal quarterly payments, to the editors and reporters; and the other, or "second moiety," at the end of each year, out of the profits of that year, so far as the same may be sufficient for the purpose: provided that the salaries or emoluments received by the House of Lords' reporters from the House shall be brought into account, and taken in part payment, of the salaries hereinbefore provided for them.

11. The editors and reporters shall be barristers, and shall be appointed and removable by the council; but the appointment of the reporters in each court shall be subject to the approval of the chief or presiding judge.

12. The existing authorised reporters shall have the offer of the first appointments in their respective courts, and in other appointments of reporters a preference may, if the council think fit, be given to the reporters of any publication which may be discontinued in consequence of the issue of the reports recommended by the committee.

13. Where there is at present a single authorised

reporter in any court, to which two reporters are to be appointed under this scheme, the council may, on his accepting an appointment as one of such reporters, assign to him a proportion greater than one-half, but not exceeding three-fourths, of the aggregate salaries allotted to that court; and the claim of any authorised reporter, who is now entitled to a greater share of the emoluments of reporting than a colleague in the same court, to have an unequal division of the salaries allotted to the same court shall, in like manner, be equitably adjusted by the council: provided, that in neither of the cases contemplated by this clause shall a reporter be entitled to receive, in any year, more than the average annual amount of his receipts for reporting for the three years next preceding his appointment as a reporter under this scheme, until his colleague, or all his colleagues if more than one, shall have been put upon an equality with him.

14. Where there are now two authorised reporters in any court, to which one only is proposed to be appointed under this scheme, and both wish to be continued, the council may, if it thinks fit, appoint them both, and direct the salary allotted to the reporter of that court to be divided between them.

15. Subject to rule 11, the editors and reporters shall be appointed for a term of five years, and they shall be eligible for re-appointment; but this limit of time shall not extend to such of the present authorised reporters as may accept appointments as reporters under this scheme.

16. The particular duties of the editors and reporters shall be prescribed by the council, who shall have full power to increase or diminish the numbers engaged, vary their duties, and adjust or alter their salaries, regard being had to existing interests for the time being, under rule 9.

17. No restriction shall be placed upon the right of either editors or reporters to practise; but it must be a fundamental requirement that the duties, whether of editors or reporters, be faithfully and punctually discharged.

18. The judges of the several courts shall be requested to appropriate convenient places to be occupied by the reporters, to allow the reporters access to all such papers as they can control, and their written judgments, and to revise the reports of their unwritten judgments before publication.

19. The Bar and the solicitors shall be requested to afford the editors and reporters all the assistance in their power for the better discharge of their duties by communicating information, and permitting the use of briefs and papers and short-hand writers' notes.

20. The Profession shall be invited to subscribe to the reports at the following scale of prices, payable in advance, viz.—

	<i>Per Annum.</i>
For the entire Set . . .	£5 5 0
For the Common-law Series . . .	3 3 0
For the Equity Series . . .	3 3 0
For the Appellate Series . . .	2 2 0

And for any subdivision which the council may think fit to make, at such prices as the council shall determine.

21. Such invitations shall contain an announcement that it is considered essential for carrying out the scheme that the aggregate amount of subscriptions, inclusive of any advance from the Consolidated or Sutors' Fund, in respect to the first moiety of the salaries or otherwise, shall reach 10,000*l.* at least.

22. If such subscriptions, inclusive as aforesaid, shall fall short of 10,000*l.*, the subscription list may be cancelled, and fresh invitations issued for subscriptions at increased prices, not exceeding double the above scale.

23. The prices to non-subscribers shall be one-third more than those charged to subscribers.

24. The Government shall be supplied with as many copies of the reports as they may require for public purposes at subscribers' prices.

25. Authority shall, if possible, be obtained for the payment out of the Consolidated or the Sutors' Fund of the first moiety of the salaries of the editors and reporters, the same to be repaid out of the price of the copies supplied to the Government; and so far as that may be insufficient, out of the proceeds of the sale of the reports, as hereinafter mentioned. In case such authority is obtained, the Lord Chancellor shall have the appointment of two additional members of the council, as mentioned in rule 1.

26. The council shall have power to make such arrangements as will lead to the discontinuance of any set of existing reports, and for discharging the consideration for the same by payments, during a limited period, out of profits, but not in priority to the payments directed to be made by articles 1, 2, and 3 of rule 29.

27. The council shall contract with one or more publishers or printers, who shall undertake all the trouble and risk of the publication, sale, and distribution of the reports, receive the subscriptions, pay all expenses, and account to the council quarterly; such accounts to be examined and audited by the council, with such assistance as they may require.

28. In case payment of the first moiety of the salaries shall not be obtained out of the Consolidated or Sutors' Fund, it shall be made a term of the contract with the publishers or printers that they shall pay such moiety by equal quarterly payments, and be reimbursed the same out of the proceeds of the sale of reports, as hereinafter mentioned.

29. The proceeds of the sale of reports, and other profits therefrom, shall be applied as follows:—

1. In defraying the expenses of the publication, sale, and distribution, including the commission or other remuneration agreed to be given to the publishers or printers, and the first moiety of the salaries, if paid by them;
2. In payment or (if previously paid under the guarantee) in reimbursement to the Inns of Court of the secretary's salary and other expenses of the council;
3. In making good to the Consolidated or Sutors' Fund (if paid thereout) so much of the first moiety of the salaries of the editors and reporters as shall not be covered by the price of the copies of reports supplied to the Government;
4. In payment of the second moiety of the salaries of the editors and reporters; and of the consideration, if any, agreed to be given for the discontinuance of any existing reports under rule 26, in such order and priority as the council shall have arranged.

Lastly. In augmenting the salaries of the editors and reporters, or such of them, if any, as the council shall consider proper to be augmented, or in constituting a reserve fund to meet future contingencies, or in such other way as the council, in their discretion, shall consider best calculated to improve the system of reporting.

30. The council shall have power, so far as they may not be fettered by any subsisting engagement, to alter the price of the reports as they may think desirable, whether the several objects to which the proceeds of the sales are hereinbefore directed to be applied, or any of them, have or have not been fulfilled.

31. The accounts shall be audited yearly by an auditor to be appointed by the editors and reporters,

and, subject to such audit, the council shall ascertain and settle the amount payable to the editors and reporters in respect of their salaries.

32. The council shall prepare and publish annually a financial statement and report of the results of the working of the system.

R. PAUL AMPHLETT, Chairman.	JAMES DICKINSON. GEORGE DRUCE.
ROBERT PHILLIMORE.	G. W. HASTINGS.
FITZROY KELLY.	N. LINDLEY.
W. T. S. DANIEL.	J. R. QUAIN.
C. JASPER SELWYN.	ALFRED WILLS.
H. M. CAIRNS.	JOHN WESTLAKE.
ALEXANDER PULLING.	F. VAUGHAN HAWKINS.

June 14, 1864.

Court Papers.

EQUITY CAUSE LISTS, AFTER TRINITY TERM, 1864.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sk.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.	Firth v. Ridley (R., June 3)
Hill v. South Staffordshire Railway Co. (S., April 11)	Aveline v. Melhuish (R., June 11)
Coventry v. Chichester (W., May 6)	CAUSES.
Brooke v. Mostyn (R., May 21)	Crosthwaite v. Turner (Sp C) L. J.
	Davies v. Davies (M D) L. J.

Note.—As the number of appeals is so small, the Lord Chancellor will sit in the House of Lords on Wednesdays, and will take Bankruptcy Appeals on Saturdays.

Before the Right Hon. the MASTER OF THE ROLLS.

CAUSES, &c.

Slaney v. Slaney (D)	Luff v. Lord (M D)
Fowler v. Fowler (M D)	Warden v. Piddington (M D)
Hinde v. Hinde (Sp C)	Labalmondiere v. Reidy (M D)
Hargreaves v. Pennington (F C)	Howard v. Earl of Shrewsbury (Cause)
In re Bradshaw } (FC, adj. from shaw } chamb.)	Hughes v. Jones (M D)
Rimmer v. Carr (F C)	Hart v. Cuthbert (M D)
Cousen v. Thorpe (M D)	Potts v. Britton (M D, Ptn. of witnesses)
Gibbons v. Holden (M D)	Wood v. Drew (M D, exam. of witnesses)
Markwell v. Bull (M D)	Harvey v. Trenchard (M D)
Markwell v. Markwell (M D)	Lee v. Lee (M D)
Braithwaite v. Kearns (M D)	Solly v. Hincks (Cause)
Reeves v. Matthews (M D)	Chadwick v. Turner (M D)
Gamble v. St. Helens Canal and Railway Co. (M D)	Wilson v. West Hartlepool Harbour and Railway Co. (Cause) June 28
Davis v. Davis (Cause, witnesses to be cross-examined. 2nd cause day)	Collier v. Knox (M D)
Howell v. Harper } (F C, with Pn.)	Banks v. Cartwright (M D)
Fulford v. Grice } (F C, with Pn.)	Borras v. Hodge (M D)
Baker v. Pritchard (M D)	Cudion v. Bowles (M D)
London & Westminster Wine Co. (Limited) v. Wright (M D)	Thompson v. Hudson (M D)
Vivian v. Browne (M D)	Knox v. Garrard (M D)
Paul v. Pole (Cause)	Caldor v. Skilbeck (M D)
Hewitt v. Nelson (Cause)	Jones v. Hughes (M D)
Pilling v. Pilling (M D)	Read v. Whitaker (F C)
	Preston v. Bradney (M D)
	Roxburgh v. Fuller (M D)
	Bowker v. Sidsley (M D)

Sturgis v. Bolden (M D)	Davies v. Woodman (M D)
Henry v. Hewitt (M D)	Millard v. Harvey (M D)
Say v. Parnell (M D)	Philpott v. Haynes (M D)
Morgan v. Davies (M D)	Goodman v. Jones (Cause)
Waterman v. Smith (Cause)	June 27
Turney v. Bayley (M D)	Thompson v. Thompson (Ca.)
Niox v. Leveaux (Cause)	Liddon v. Howard (M D)
Robson v. Flight (M D)	Pomfret v. Plucknett (M D)
Nason v. Clamp (Cause, Witnesses)	Morgan v. Morgan (M D)
Williams v. Maddox (M D)	Maythorn v. Palmer (M D)
In re Stephenson's } (FC, ad. Estate } from Stephenson v. Neate } cham.)	Charlsworth v. Jennings (M D)
Linford v. Provincial Horse and Cattle Insurance Co. (M D)	Ridley v. Ridley (M D)
Pritchard v. Roberts (M D)	Weston v. Collins (M D)
Cooke v. Mirehouse (M D)	Turrell v. Hocking (M D)
Spiller v. Maude (M D)	Beresford v. Conyers (M D)
Lawrence v. West India Relief Commissioners (M D)	Ingle v. Goodwin (Cause)
Lloyd v. Banks (M D)	Best v. Stonehewer (M D)
Shillingford v. Hutt (F C)	Butcher v. Butcher (M D)
Rhodes v. Pickup (F C)	Lees v. Olivant (M D)
Weedon v. Conway (F C)	Att.-Gen. v. Moises & 3 other causes (F C)
Long v. Bowring (M D)	Batchelor v. Morley (M D)
Turner v. Burkinshaw (M D)	Barrow v. Tyrer (M D)
Emmet v. Tottenham (M D)	Surr v. Britton (M D)
Bubb v. Green (M D)	Kirkham v. Davies (M D)
Phillips v. Phillips (M D)	In re Mackinlay } (F C)
Simpson v. Terry (M D)	Ward v. Mackinlay }
Perrott v. Edmunds (Cause)	Apletree v. Apletree (M D)
Burton v. Granger (M D)	Orme v. Orme (M D)
Howard v. Howard (M D)	Earl Ferrers v. Shirley (M D)
Redman v. Gregory (M D)	Willim v. Hayes (M D)
Harrison v. Collinson (Cause)	Glover v. Hartcup (M D)
Stares v. Penton (M D)	In re Price } (F C)
Moss v. Chapple (M D)	Ridley v. Price }
Muspratt v. Ventham (Cause)	Procter v. Slight (F C)
Priestly v. Ashworth (M D)	Mummery v. Mummery (M D)
Attwood v. Ware (Cause)	Prowse v. Spurgin (M D)
	Simmons v. Rose (F C)
	Hodge v. Jackson (M D)
	Boden v. Hirsch (M D).

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

CAUSES, &c.

Tiffin v. Parker (Cause, part heard)	Hendrie v. Springfield (Cau.)
Lee v. Hamerton (D)	Smart v. Hawksworth (M D)
Curtis v. Graham (M D)	Watson v. Rose, Knt. (M D)
Bennett v. Bennett (M D)	In re Cresswell } (F C, adj. from linsky } chamb.)
Lord Ranelagh v. Melton (M D)	Jackson v. Parkin (M D)
Wardell v. Lawty (Cause)	Leese v. Knight (F C)
Riley v. Croydon (M D)	Millard v. Ellyett (M D)
Poole v. Foxwell (M D)	Savile v. Kinnaird (M D)
Bruton v. Morris (M D)	Watts v. Griffin (M D)
Smith v. Charles (M D)	Hull v. Falconer (F C)
Shrubsole v. Schnel-der } Trial by jury } Jun. 28	Gant v. Heales (M D)
Drevon v. Drevon (F C)	Hakewill v. White (F C)
Barker v. Pells (M D)	Earl of Eglinton v. Lamb, Bart. (M D)
Williams v. Wil- } (Cause witnesses to be cross-exd.) } July 13	Earl of Eglinton v. Lamb, Bart. (M D)
Watson v. Sir G. Rose (M D)	Hare v. Pryce (F C)
Lee v. Hamerton (M D)	Jenkins v. Lemon (Cause)
Jones v. Rees (M D) June 28	Whitmore v. Board of Guardians of the Parish of St. Leonards, Shoreditch (M D)
Reid v. Don Pedro North del Rey Gold Mining Co. (Limited) (Cause, examination of witnesses) July 5	Oakden v. Pike (M D)
Kendall v. Cook } (Cause, ex. Cook v. Atkin-son } of witness.) } June 29	Spenser v. Saxby (Cause)
Besse v. Dear (Cause, examination of witnesses)	Hensman v. Fryer (M D)
Hewer v. Keats (M D)	Tomlinson v. Rutter (M D)
	Smith v. Parkin (M D)
	Lovegrove v. Heath (M D)
	Gant v. Heales (M D)
	Morgan v. Morgan (M D)
	Readwin v. Vebra and Clogan
	Copper Mining Co. (Cause)
	Gillett v. Gane (M D)
	Carolan v. Muddelle (F C)

Paine v. Brown (Cause)
Peirce v. Hammond (M D)
Hitch v. Vespar (F C)
Gataker v. Reynardson (Cau.)
Gataker v. Partridge (Cause)
Fitch v. Cutts (Cause)
Sharplin v. Symons (M D)
Cooke v. Hathway (Cause)

Gentry v. Gentry (Sp C)
In re Gadbury } (F C, from
Kennett v. Gadbury } chambers)
Tuck v. Binstead (M D)
Dakers v. Lilburn (M D)
Shuttleworth v. Bristo (F C).

Way v. Bult (F C)
Bird v. Cawley (F C)
Defries v. Smith (F C, and
Summons)
Walford v. Gray (Cause)
Clark v. Levens (M D)

Durrant v. London, Brighton,
and South-coast Railway
Co. (M D)
Barrow v. Barrow (M D)
Bull v. Stanley (Rehearing)
Johnson v. Plowden (M D).

Before the Vice-Chancellor Sir JOHN STUART.

CAUSES, &c.

Howe v. Waldo (E to answer)
Forbes v. Preston (D)
Dicker v. Inge (D)
Beynon v. Morris (E to ans.)
Fray v. Drew (Cause)
Mitchell v. Windham (M D)
Johnson v. Stavert (M D, part
heard)
Ihler v. Davies (F C, Ptn in
Davison v. Battine)
Sporie v. Barnaby (Cause,
Ptn)
Scole v. Lee (Cause)
Corner v. Okey (M D)
Frankum v. Harford (F C)
In re Whitehead } (F C,
Godfrey v. Whitehead } from
head } chamb.)
Bartley v. Bartley (Sp C)
Wroe v. Seed (F C)
Poole v. Beddall (F C)
Barrow v. Griffith { (F C,
Harrow v. Newman { and two
Sum.)
Cockshott v. Lister (F C)
Heslop v. Magnay (F C)
Joel v. Eastham (Cause and
Summons)
Stubbings v. Fisher (F C)
Woodhouse v. Hall (F C)
Nicholson v. Newton (F C)
Head v. Valpy (F C)
Williams v. Wilson (Sp C)
Lownsbrough v. Coleman (M
D)
Wooton v. Hulse (F C)
Little v. Newburn (F C, M)
Taylor v. Yarde (F C)
Lane v. Brillman (Cause)
Snowdon v. Wright (F C, set
down by defendant)
Newby v. Cram } (Cause)
Bramwell v. Cram }
Crozier v. Newby (Cause)
Miller v. Bush (M D)
Rooth v. Sharpe (M D)
Radcliffe v. Radcliffe (Cause)
Kennedy v. Killick (M D,
Ptn)
Holberton v. Clement (M D)
Cubitt v. Smith (M D)
Massey v. Massey (Cause)
Green v. Crockett (Cause)
Postgate v. Barnes (M D)
Goldsmid v. Heathcote (M D)
Cornforth v. Pointon (Cause)
Owens v. Hunt (F C)
Stronach v. Unthank (M D)
Girdlestone v. Richards and 5
other causes (F C, adj. Ptn,
and Summons)
Gadaby v. Green (M D)
Staniland v. Wade (Cause)
Blackburn v. Horwood (F C)
Stapleton v. Salisbury (M D)
Earl of Darnley v. London,
Chatham, and Dover Rail-
way Co. (Cause)
Buckley v. Blackburne (M D)

Hearn v. Bannister (M D)
Crossley v. Lord (F C)
Tottenham v. Emmet (M D)
Godfrey v. Whitehead (F C)
Vickers v. Todd (M D)
Smith v. Moreton (M D)
Fletcher v. Fletcher (Sp C)
Scott v. Walker (F C)
Silvester v. Silvester (F C)
Bothamley v. Gordon (Sp C)
Wilkie v. Beacham (F C, M)
Jarvis v. Ferguson (F C)
Mitchell v. Mitchell (F C, M)
Wood v. Cox (F C)
Rackham v. De la Mere (F C)
Mac Rae v. Allardyne (F C)
Baily v. Keighley (M D)
Phillips v. Phillips (M D)
Jeffreys v. Stewart (F C)
Sir C. C. W. Domville, Bart.,
v. Wilkie (M D)
Plucknett v. Pomfret (M D)
Lindsay v. Orrman (M D)
Staffordshire and Worcester-
shire Canal Co. v. Birming-
ham Canal Navigation (M
D)
Duckworth v. Hudson (M D)
Hardy v. Hardy (M D)
Holloway v. Webber (M D)
Piggott v. Piggott (M D)
Crow v. Cross (F C)
Tee v. Bridger (Cause)
In re Davies } (F C, from
Baldwin v. Read } chambers)
Marshall v. Smith (Cause)
Wetton v. Wildgoose (M D)
Butt v. Graham } (F C)
Windus v. Graham }
Parry v. Hayward (M D)
Corseilis v. Patman (M D)
Lambert v. Overton (M D)
Adam v. King (M D)
Fry v. Fry (F C)
Eastman v. Dennis (M D)
Eastman v. Dennis & an.
(M D)
Smith v. Gooch (M D)
Field v. Ryman (M D)
Cokayne v. Chanter (Cause)
Rhodes v. Halifax Industrial
Society (M D)
Crockett v. Green (Cause)
Collinson v. White (M D)
Higgins v. Lindsay (M D)
Armitage v. Crosland (F C)
Hubbard v. Hubbard (Sp C)
In re Bratt } (F C, from
Bratt v. Bratt } chambers)
Turney v. Townsend (M D)
Fray v. Drew (Cause)
Morocco Land and Trading
Co. v. Fry (M D)
Burris v. Jenkins (Cause)
Grove v. Walker (F C)
Gould v. Gould (F C, set down
by defendant)
M'Intosh v. Great Western
Railway Co. (F C)

Before the Vice-Chancellor Sir W. P. WOOD.

CAUSES, &c.

Fuller v. Chamier (Rehear.)
Nelson v. Banter (D)
Fisher v. Dingley } (M D)
Fisher v. Phelps }
Bird v. Lake } (Cause)
Bird v. Turner }
David v. Jenkins (M D)
Tongue v. Tongue (Sp C)
Simpson v. Holliday (Trial be-
fore the Court without a
jury, part heard)
Orridge v. Wilks (M D)
Roscoe v. Lace (F C)
Parsons v. North (M D)
Foster v. Gladstone (M D)
Beavill v. Sheehy (M D)
Att.-Gen. v. Metropolitan
Board of Works (M D)
Simpson v. Brown (M D)
Wedderburne v. Thomas (Cau.
pro confesso)
Fenton v. Hankins (F C)
Bishop v. Scott (M D)
Daniel v. Arkwright (Cause)
Hammer v. Chance (M D)
Bridges v. Highton (M D)
Cox v. Taylor (M D)
Wilson v. Bullivant (M D)
Forbes v. Mackenzie (Cause)
Browne v. Freeman (M D)
Allan v. Scott (M D)
Daniel v. Courthorpe (M D)
Hooper v. Gunn (Cause)
McLellan v. Gunn (Cause)
Taylor v. Cox (Cause)
Walker v. Drummond (F C)
Smith v. Baker (M D)
Fisher v. Moon (M D)
Underhay v. Tyler (M D)
Porter v. Dawson (F C)
Higgins v. Edgell (M D)
Att.-Gen. of the Prince of
Wales v. Newton (Cause)
Hall v. James (M D)
Courthorpe v. Daniel (M D)
Cooper v. Burial Board of
Uttoxeter (Cause)
Arrowsmith v. Dean (M D)

Sherman v. Horrell (M D)
Dalton v. Neale (F C)
Bradley v. Bury (M D)
Davis v. Kennard (M D)
Kitson v. Hare (M D)
Dowle v. Saunders (Cause)
Tynte v. Hodge (Cause)
Gilbert v. Overton (M D)
Onions v. Cohen (M D)
Hurlstone v. Ashton (M D)
Souther v. Clayton (M D)
Tunstall v. George (M D)
Tillman v. Tillman (M D)
Cooke v. Cooke, otherwise
Rimsall (Cause)
Webster v. Webster (M D)
Rowley, Bart., v. Galloway,
Bart. (M D)
Kirkwood v. Thompson (M D)
Day v. Overman (M D)
Challinor v. Bowen (M D)
Galloway v. Mayor, &c. of
London (M D)
Chinnock v. Marchioness of
Ely (M D)
Porcher v. Wilson (M D)
Knox v. Wells (F C)
Blagden v. Burgess (M D)
Howard v. Woodward (M D)
Seixo v. Provezenzo (M D)
Fitch v. Fitch (M D)
Bradshaw v. Bradshaw (M D)
Featherstonhaugh v. Lee Moor
Porcelain Co. (M D)
Bradshaw v. Mudd (M D)
Heath v. London, Brighton,
and South-coast Railway
Co. (M D)
Heath & an. v. London, Bright-
on, and South-coast Rail-
way Co. (M D)
Eden v. Thompson (M D)
Cheltenham Water-works Co.
v. Russell, Bart. (M D)
Duke of Northumberland v.
Great Western and Great
Eastern Railway Co. (Cause).

Imperial Parliament.

HOUSE OF LORDS.—Thursday, June 16.

CHAIN CABLES AND ANCHORS BILL.

This bill was passed through committee.

IMPROVEMENT OF LAND ACT (1864) BILL.

On the order of the day for the House resolving itself into
committee on this bill,

Lord *St. Leonards* said, he regarded the bill as one of a
very hazardous description.

Lord *Portman* and the Earl of *Malmesbury* spoke in
favour of the bill.

The Lord Chancellor said, the provisions of this bill had
been discussed with the greatest care by the select committee,
and he believed that it would, when enacted, be of the greatest
advantage to the country.

Earl *Grey* spoke in support of the bill.

The bill then passed through committee.

On bringing up the report, Lord *Redesdale* said, he had proposed in the select committee that this bill should be compulsory on all companies, and he regretted that the proposition was not adopted by the committee.

The bill was then reported.

MORTGAGE DEBENTURE BILL.

This bill was read a third time, and passed.

PUBLIC SCHOOLS BILL.

After some debate, this bill was read a third time, and passed.

SCOTTISH EPISCOPAL CLERGY.—REMOVAL OF DISABILITIES BILL.

On the motion of the Duke of *Buccleuch*, this bill was read a third time, and passed.

Friday, June 17.

ANSWER TO THE ADDRESS TO HER MAJESTY RESPECTING THE WEST RIDING ASSIZE TOWN.

Lord *Sydney* (Lord Chamberlain) read the following reply of her Majesty to the address praying that the late decision of the Privy Council ordering the removal of the West Riding assize from York to Leeds, instead of Wakefield, might be reconsidered:—"I have to inform you, that, in pursuance of the provision of the act passed in the 3 & 4 Will. 4, an order was made by me, with the advice of my Privy Council, on the 10th inst., ordering and directing that assizes for the West Riding of Yorkshire shall be held at Leeds, and the 6th day of August has been since fixed by my judges of assize for the Midland Circuit for holding the next assize for the West Riding in that town. I have directed that a copy of this order shall be laid before you. If it should hereafter appear that, with a view to the more cheap, speedy, and effectual administration of justice, it may be expedient to appoint some other place for holding an assize in the West Riding, the subject shall be again referred for the consideration and advice of my Privy Council."

COUNTY COURTS ACT AMENDMENT BILL.

The Lord Chancellor announced, that, for various reasons, he would postpone the further consideration of this bill during the present session, but he hoped that next session a similar measure might be reintroduced.

CHURCH SERVICES (APOCRYPHA) BILL.

After some discussion, the order for the second reading of this bill was discharged.

PENAL SERVITUDE ACTS AMENDMENT BILL.

On the question that the reports of the amendments to the bill be received; on clause 4,

The Earl of *Lichfield* moved an amendment, dispensing with the necessity of a person sentenced to penal servitude to report himself once a month to the police, and requiring him to do so only when required by the conditions of his license.

The Earl of *Carnarvon* thought, that if the amendment were adopted it would amount to a reversal of the decision which their Lordships arrived at the other night, for by the amendment the Secretary of State would be empowered to sweep away every condition, and to dispense with supervision if he should think fit. He (the Earl of *Carnarvon*) should, however, be willing to insert a provision, that after the first appearance of a ticket-of-leave man, his future attendance to report himself might be dispensed with.

After a few words from Earl *Granville*, the House divided—

For the amendment	..	..	..	44
Against	..	..	..	36
Majority	..	..	..	—8

Some other amendments were agreed to, and the report was received.

The reports of amendments in the Ecclesiastical Courts and Registries (Ireland) Bill, the Union Assessment Committee Act Amendment Bill, and the Improvement of Land Act (1864) Bill, were brought up and received.

CHAIN CABLES AND ANCHORS BILL.

This bill was read a third time, and passed.

Tuesday, June 21.

ATTORNEYS' AND SOLICITORS' REMUNERATION, &c., BILL.

The Lord Chancellor moved the second reading of this

bill, which he considered to be one of great importance. It contained a number of provisions upon points relating to the subject in question, which it appeared to him ought to be included in a measure of this kind. The principal and most important feature of the measure was that which related to the present mode of remunerating attorneys and solicitors. He believed that that mode of remunerating this most necessary and honourable order of professional men lay at the root of the many abuses connected with the operation of the law. That mode of remuneration was prescribed without any reference whatever to the skill, ability, industry, or judgment of the particular individual acting as attorney or solicitor. The skilled practitioner was paid precisely at the same rate as the ignorant or unskilled. The mode of remuneration recognised by the law led to all evils arising from great prolixity, unnecessary verbosity, and the multiplication of words and phrases. The attorney or solicitor felt himself placed in such a position that in order to obtain the ordinary reward for his time and labour he was obliged to transact his business upon this principle. Take the case of an attorney engaged to prepare the draft of a deed. Adopting a great number of forms and the ordinary common-places in law, he would probably prepare a deed that would extend to 200 folios, at a cost to the client of ten guineas. But supposing he used great care and judgment, and reduced the deed to 100 folios, by avoiding the usual prolixity and verbosity, he found that his reward was only five guineas. Then, again, by a greater exercise of his judgment, supposing that he reduced the length of the deed to fifty folios, his remuneration would only amount to two-and-a-half guineas—a sum by no means adequate to the great professional skill which he had exercised in the preparation of this document. In all cases attorneys were compelled to charge for useless services in order that they might be paid for the useful services they rendered. The evils which had resulted from this system were now considerable. In the pleadings counts were unnecessarily multiplied, and very considerable expenses were involved. These difficulties had existed for a long period of time; but, as was usual in matters connected with English law, even after the abuses had been pointed out, they were allowed to remain for nearly half a century before the matter was brought to an issue, and an attempt was made to remove them. He meant that this bill should apply to the whole range of business that was transacted by attorneys, and he was convinced that, by the provisions of the bill, the business would be done in less time, with a greater amount of certainty, and with greater skill than at present. He proposed, that where solicitors could enter into contracts with their clients they should do so, and also that they should take security from their clients for the payment of costs. After giving a summary of the other clauses of the bill, the noble and learned Lord concluded by moving the second reading of the bill.

Lord *Brougham* thought it would be dangerous to permit professional men becoming trustees to charge the estate with their professional bills, but, on the whole, he was inclined to think the bill would prove highly useful.

Lord *St. Leonards* spoke at some length against the bill, and said it struck at the true interests both of attorneys and clients, and as it was most dangerous in principle, he should give it his hearty opposition.

Lord *Chelmsford* said, remembering the speech which his noble friend delivered last session as to the mode of framing acts of Parliament, he was surprised that such a bill as this should have come from his noble friend's hands. The bill contained subjects of great importance, utterly unconnected with each other, so that it was quite impossible to grasp any one principle of the bill, as each division gave rise to separate discussion. He should think that his noble and learned friend had taken as his pattern a bill upon which he had stumbled, and which was passed in the reign of George II., intitled "An act to continue several laws for preventing exactions by the occupiers of locks and weirs on the river Thames westward—for ascertaining the rates of water carriage on the said river—for continuing and explaining the several laws for the better regulation of attorneys and solicitors—for regulating the price and assize of bread—for preventing the spreading of distemper amongst horned cattle—also to make further regulations respecting attorney and solicitor, and for further preventing distemper in horned cattle—for more frequently returning writs in the county palatine of Lancaster—for ascertaining the levying of writs of exe-

cation, and for allowing Quakers to make affirmation in cases where an oath was required." That bill had an advantage over the bill of his noble friend, for it fully explained its object. From what his noble and learned friend said some time ago, with regard to the inducements of conveyancers to make long deeds, he thought the bill would apply to that subject; but the bill was to enable all attorneys and solicitors, in every case, to enter into agreements with their clients to receive a sum of money, so as to escape the necessity of taxation of the bill of costs, as provided for by a recent act of Parliament—a power which he (Lord Chelmsford) thought was a preventive to oppression and extortion. He decidedly objected to that clause as it stood. The next clause was a little inconsistent, for his noble and learned friend had spoken of the family solicitor as the Old Man of the Sea, in the story of "Sinbad the Sailor." He (Lord Chelmsford) thought their Lordships would rather look upon him as the confidential friend and adviser. Now, his noble and learned friend proposed to place this Old Man of the Sea more firmly on the shoulders of his clients, by enabling him to be a trustee, and charge his costs. It was, however, impossible to discuss these clauses on that occasion, and the bill ought to be sent to a select committee. His noble friend some time ago had caused considerable pain to the great body of solicitors, by stating that the ill success of the Land Transfer Act was attributable in some degree to the solicitors having thwarted its object by preventing their clients taking advantage of it. He was sure that his noble and learned friend did not intend that his observations should extend to the profession at large, because the Metropolitan and Provincial Law Association, consisting of 800 members, petitioned in favour of the bill. Of course, there were instances in which solicitors had prevented their clients taking advantage of the act; but he was perfectly sure, from what he knew of the solicitors generally, that they were far too honourable to sacrifice the interests of their clients to their own selfish advantage.

After some remarks from Lord Cranworth,

The Lord Chancellor said that he had never thought of opposing the suggestion, that the bill should be referred to a select committee; and he mentioned, that as to the proposal in reference to the remuneration of solicitors, the Law Society approved of it, except in this, that they did not think that the precaution of having an agreement in writing would be necessary.

The bill was read a second time, and ordered to be referred to a select committee.

VACATING OF SEATS (HOUSE OF COMMONS) BILL.

This bill was read a second time.

THIRD READINGS.

The following bills were read a third time, and passed:—Penal Servitude Acts Amendment Bill; Union Assessment Committee Act; Ecclesiastical Courts and Registries (Ireland) Bill; Chain Cables and Anchors Bill; Improvement of Land Act (1864) Bill; Naval Prize Acts Repeal Bill; and Banking Co-partnerships Bill.

HOUSE OF COMMONS.—Thursday, June 16.

REGISTRATION OF TITLES (IRELAND).

Mr. Waldron asked the Attorney-General for Ireland if the bill for the registration of titles in Ireland would be introduced before the end of the session.

Mr. Scully inquired, if the bill would not be introduced this session, whether the Government would consider the propriety of appointing a royal commission.

The Attorney-General for Ireland said a bill for the transfer of land in Ireland was in preparation. Immediately after the discussion of the question, a short time since, it was commenced, and he hoped it would be ready for introduction on an early day. He did not anticipate the necessity of a commission, as he was confident he should be able to introduce the bill this session.

Friday, June 17.

FACTORY ACTS EXTENSION BILL.

On the order of the day for the House resolving itself into a committee on this bill, clauses 1 to 7 inclusive were adopted.

After some discussion, the chairman reported progress, and obtained leave to sit again on Monday week.

THE CHARITY COMMISSIONERS.

On the motion for going into committee of supply, Mr. Ferrand (who spoke at great length) rose to move for a select committee to inquire into the construction, the expense, and the working of the Board of Charity Commissioners. There were no less than forty members connected with this board, every one of whom, without a single exception, belonged to the Whig party. There had been grievous complaints for a length of time made against this Charity Board. By various bills introduced into this House during the last few days of two or three sessions of Parliament, the board had become possessed of the most unconstitutional powers. The commissioners and the inspectors were clothed with judicial powers. When a Government stood before Parliament for the purpose of inducing them to agree to a measure of this important description, the Lord Chancellor of that day said, that "the board were to consist of three commissioners, one secretary, and two legal gentlemen of high attainments, upon whom, of course, the more laborious part of the business would devolve, to be inspectors, who were to go into the country, and bring justice home to the doors of the different charities." He also stated that "the total expense would probably not be more than 5000*l.* or 6000*l.* a year, and that it should be paid out of the public exchequer." The expense of the board during the past year, however, amounted to no less than 18,250*l.* Earl Russell had stated that the appointments ought to be made irrespective of all party considerations. But on the 22nd October, 1853, Mr. Peter Erle, a Whig, was appointed chief commissioner, at a salary of 1500*l.*; Mr. James Hill, a Whig, was appointed at a salary of 1200*l.*; and the Rev. R. Jones, another Whig, was appointed, with the same amount of salary. Mr. Henry Morgan Vane was appointed an inspector, with a salary of 800*l.*; Mr. Hare was appointed an inspector, with a salary of 800*l.*; and Mr. Skirrow, jun., was also appointed an inspector, with a salary of 800*l.* He had known that gentleman from his boyhood, and did not believe there was a more honourable man, and understood that but for him the board would come to a stand-still. He now came to the act of 1855, under which Mr. Campbell, Q. C., was appointed permanent commissioner, with a salary of 1200*l.* a year, in direct violation of a pledge which had been given to Parliament. He now came to the three inspectors—the men whose assistance was absolutely necessary in August, 1855, but who were not appointed until April, 1856. There was a strong opinion in many parts of the country that Mr. Martin had grossly failed in the performance of his duty. Mr. Bowles, the second inspector, had been the electioneering agent in the previous year of the private secretary of the present Prime Minister of England. Now, was he a fit man to be appointed an inspector, when a pledge had been given that party feeling was not to be mixed up with the appointment to the board? He now came to the third appointment, that of Mr. John Simons, who was declared by the right hon. member for Calne to be "a gentleman who has not been brought up, as far as I am aware, to anything." The gentleman referred to was not Mr. John Simons; he was Mr. John Simons, jun.—an uneducated man. He could write indifferently, but he could not spell. This person was clothed with judicial powers. Now, who was Mr. John Simons, jun.? In the year 1853 Mr. John Simons, jun. was a coal and potato dealer. At the end of that year he fled from his creditors to Australia. It was decided that the coal and potato dealer should be provided for by the Charitable Trusts Amendment Act, which was then before Parliament, and a place was secured for him as a third charity inspector. The act received the royal assent on the 14th August. He was immediately written to, and desired to come home, for a lucrative Government office had been provided for him by one of the highest in the land. He arrived in England early in 1856, and had to undergo two months' preparation before his friends dared to let him enter the office of the Charity Board. He was then recommended to her Majesty as duly qualified, and appointed by the Queen on the 21st April, all three appointments of inspectors having been kept vacant for eight months, until he returned to England and was prepared, although the Attorney-General had declared, on the 8th August in the preceding year, that their immediate appointment was absolutely necessary for the administration of the law. This corrupt appointment was connected with a scandalous transaction, in which a cabinet minister was deeply implicated.

Mr. Bruce had wished that the tone and language adopted by the hon. member had been such that the Government could have acceded to the motion. The Charity Commissioners were men of well-known ability, integrity, and industry, and did not require any defence from him. Of Mr. Simons's life previous to his entering into the office he knew nothing. In answer to inquiries, he learned that he had performed his duties satisfactorily; and it was most ungenerous on the part of the hon. gentleman to rake up the past as he had done, especially as not the slightest allegation was made against him subsequent to his appointment. If the hon. member for Devonport had made this motion for inquiry in common decency, or with a sense of justice, he (Mr. Bruce) should have only been too glad to accede to it, as he was assured that it would redound to the honour and credit of the commissioners, and lead to an extension of the powers so advantageously bestowed on them; but he trusted that the House, receiving the assurance of the Government that they would have had no objection to a general inquiry, would reject a motion introduced upon imputations so lavishly made, and advanced upon so poor a foundation of proof, and by so doing censure the course pursued by the hon member for Devonport.

After some debate, the House divided—

For Mr. Ferrand's motion	..	..	..	40
Against it	..	..	..	116

Majority against it 76

Monday, June 20.

YORK ASSIZES.

Mr. S. Estcourt gave notice that he should, on going into supply on Monday next, move a resolution relative to the removal of the assizes from York to Leeds.

TITLES TO LAND (IRELAND).

Mr. Scully asked the Attorney-General for Ireland whether his attention had been called to the Parliamentary return No. 363, as to the transfer of land, presented to the House on the 7th June instant, shewing that the poundage (above ad valorem duties) paid to the Consolidated Fund was 87l. 6s., for obtaining indefeasible titles under the English Land Transfer Act, 25 & 26 Vict. c. 53, to estates in England, the gross value whereof was 98,499l., and that the poundage (above ad valorem duties) payable to the Consolidated Fund for obtaining indefeasible title to estates of the like value in Ireland, under the Irish Land Transfer Acts, 31 & 32 Vict. c. 72, and the 24 & 25 Vict. c. 123, would be 492l. 9s. 11d., being rather more than five and a half times the poundage chargeable for indefeasible titles to English estates; and whether he would endeavour to remedy that anomaly through his promised measure for registering titles to land in Ireland.

The Attorney-General for Ireland said he was not quite certain that it was possible entirely to remedy the anomaly, but the matter should have his attention.

LAW OF PARTNERSHIP.

Mr. Bright, in the absence of his colleague (Mr. Scholefield), asked the President of the Board of Trade whether the Government was prepared to bring in a bill this session for the amendment of the law of partnership.

Mr. M. Gibson said so much had already been done on this question, and so much discussion had taken place, that although it was late in the session he should be prepared to lay a bill on the table. It was in a simpler form than that of the honourable member for Birmingham, and, therefore, he should be able to take an early opportunity of bringing it before the House.

GOVERNMENT ANNUITIES, &c. BILL.

This bill was read a third time, and passed.

GAOLS BILL.

Sir G. Grey moved the third reading of this bill.

Mr. Newdegate moved that the bill be read that day three months.

After a long debate, the House divided—

For the third reading	..	..	..	128
Against it	..	..	..	132

Majority 4

The bill was accordingly rejected.

RAILWAY CONSTRUCTION FACILITIES BILL.

This bill passed through committee, certain verbal amendments having been inserted.

RAILWAY TRAVELLING (IRELAND) BILL.

The House divided against the second reading of this bill, by a majority of 19.

LUNACY (SCOTLAND) BILL.

This bill was read a second time.

PIER AND HARBOUR ORDERS CONFIRMATION BILL.

This bill passed through committee.

INSANE PRISONERS ACT AMENDMENT BILL.

The Lords' amendments in this bill were considered, and agreed to.

SUPERANNUATIONS (UNION OFFICERS) BILL.

The amendments in this bill were also agreed to.

COURT OF JUSTICIARY (SCOTLAND) BILL.

The Lords' amendments in this bill were agreed to.

PUNISHMENT OF RAPE BILL.

Upon the motion for the second reading, Sir S. Northcote thought that the bill would require some amendments, and he therefore suggested, that the committee should be appointed for a Wednesday, or for some other day, when there would be time for discussion.

The bill was read a second time, and the committee was appointed for Monday next.

DIVORCE AND MATRIMONIAL CAUSES (AMENDMENT) BILL.

This bill was read a second time.

BURIALS REGISTRATION BILL.

This bill was read a third time, and passed.

SERVANTS HIRING (SCOTLAND) BILL.

This bill was read a third time, and passed.

CONTAGIOUS DISEASES BILL.

Lord C. Paget brought in a bill for the prevention of contagious diseases at certain naval and military stations.

Tuesday, June 21.

COURT OF CHANCERY (IRELAND) BILL.

This House went into committee on this bill.

Clauses 1 to 11 were agreed to without discussion.

On clause 12,

Mr. Whiteside moved that the measure might be referred to a select committee.

After some debate, the House divided—

For the motion	..	..	..	42
Against it	..	..	..	41

Majority for the motion 1

ACCIDENTS COMPENSATION ACT AMENDMENT BILL.

This bill passed through committee, with amendments.

COVENTRY FREE GRAMMAR SCHOOL BILL.

This bill was read a third time, and passed.

SALE OF GAS (SCOTLAND) BILL.

This bill was read a third time, and passed.

Wednesday, June 22.

THE COURT OF CHANCERY (IRELAND) BILL.

The Attorney-General for Ireland moved that the House to-morrow (Thursday) resolve itself into a committee of the whole House to consider the further progress of the bill.

After some debate, the motion was agreed to.

JOINT-STOCK COMPANIES (VOTING PAPERS) BILL.

The House went into committee on the bill.

On clause 1, a motion that the chairman report progress having been made and withdrawn,

Mr. Peacock moved that the chairman leave the chair.

The committee divided—

For the motion	..	..	..	76
Against it	..	..	..	49

Majority for the motion 27

WEIGHTS AND MEASURES (METRIC SYSTEM) BILL.

The House resolved itself into a committee on this bill.

After some discussion, the motion for the omission of clause 2 was agreed to, and new clauses were substituted in its stead.

The bill then passed through committee.

BANK OF ENGLAND NOTES (SCOTLAND) BILL.
After some debate, this bill was withdrawn.

JERSEY COURT BILL.

On the order of the day for the House resolving itself into committee on this bill, after some debate, on the motion of Mr. Ayrton the debate was adjourned.

SUPERANNUATION (MINOR OFFICERS) BILL.

This bill was read a third time, and passed.

PILOTAGE ORDER CONFIRMATION BILL.

This bill was read a third time, and passed.

PIER AND HARBOUR ORDERS CONFIRMATION BILL.

This bill was also read a third time, and passed.

COUNTRESS OF ELGIN AND KINCARDINE ANNUITY BILL.

This bill was also read a third time, and passed.

INDIA OFFICE.

Mr. Cowper obtained leave to bring in a bill to vest the site of the India Office in her Majesty, for the service of the Government of India.

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

TRINITY TERM, 1864.

INTERMEDIATE EXAMINATION.

THE Examiners have on former occasions thought it right, in making their report to the council, to mention the names of those candidates who had passed the examination with distinction.

In the present term, however, the papers of the majority of the candidates were of such uniform merit, that the Examiners feel it would be difficult, and perhaps invidious, to make selections.

The number of candidates examined in this term was 148, the whole of whom were passed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

FINAL EXAMINATION.

AT the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

1. Frederic Ferdinand Smallpeice, aged twenty, who served his clerkship to Messrs. W. H. & M. Smallpeice, of Guildford; and Mr. Edward Brodribb Randall, of London.

2. John Mitchell Marshall, aged twenty-one, who served his clerkship to Messrs. Ryland & Martineau, of Birmingham; and Messrs. Sharpe & Parker, of London.

2. William Henry Stewart, aged twenty-one, who served his clerkship to Mr. William Stewart, of Wakefield; and Messrs. Torr, Janeway, & Tagart, of London.

2. Frank Taylor, aged twenty-five, who served his clerkship to Messrs. Rhodes, of Market Rasen; and Messrs. James Scott & Co., of London.

3. George Buchanan, aged twenty-one, who served his clerkship to Messrs. Walker & Hunter, of Whitby; Mr. John Buchanan, of Whitby; and Messrs. Bell, Brodrick, & Bell, of London.

3. Frederick Goodman, aged twenty-one, who served his clerkship to Messrs. Goodman & Morley, of London.

3. William Bartlett Harris, aged twenty-one, who served his clerkship to Mr. John Stogdon, of Exeter; Mr. Edmund Jonathan Hornblower Watkins Clarke, of Exeter; and Mr. Thomas Baker, jun., of London.

3. William Hitchins, aged twenty-five, who served his clerkship to Mr. George Wilcocks Billing, of De-

vonport; and Messrs. Sole, Turners, & Hardwick, of London.

3. Thomas Rawle the younger, aged twenty-two, who served his clerkship to Messrs. Blandy, of Reading; and Messrs. Gregory & Rowcliffes, of London.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—

To Mr. Smallpeice, the prize of the Honourable Society of Clifford's-inn.

To Mr. Marshall, one of the prizes of the Incorporated Law Society.

To Mr. Stewart, one of the prizes of the Incorporated Law Society.

To Mr. Taylor, one of the prizes of the Incorporated Law Society.

To Mr. Buchanan, one of the prizes of the Incorporated Law Society.

To Mr. Goodman, one of the prizes of the Incorporated Law Society.

To Mr. Harris, one of the prizes of the Incorporated Law Society.

To Mr. Hitchins, one of the prizes of the Incorporated Law Society.

To Mr. Rawle, one of the prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, under the age of twenty-six, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

Francis Adams, aged twenty-four, who served his clerkship to Mr. George Charles Richards, of Redditch; and Messrs. Thomas White & Sons, of London.

Charles Royle Allen, aged twenty-one, who served his clerkship to Messrs. Allen & Aston, of Manchester; and Messrs. Bower, Son, & Cotton, of London.

Cecil Arundell, aged twenty, who served his clerkship to Messrs. Bell, Steward, & Lloyd, of London.

Edward Bull, aged twenty-five, who served his clerkship to Mr. Frederick Blake, of Newport, Isle of Wight; and Messrs. Cunliffe & Beaumont, of London.

Frederick Marshall Burton, aged twenty-one, who served his clerkship to Mr. Samuel Pearman Smith, of Walsall.

Edgar Christmas Harvie, aged twenty-two, who served his clerkship to Mr. Harry Arthur Harvie, of Bideford; Mr. James Rooker, of Bideford; and Messrs. Kingdon & Cotton, of London.

Thomas Mytton, aged twenty, who served his clerkship to Messrs. Wallington & Wright, of Leamington-priors; and Messrs. Gregory & Rowcliffes, of London.

Horace Montague Ogle, aged twenty-one, who served his clerkship to Mr. George Ogle, of London.

William Henry Toller, aged twenty-one, who served his clerkship to Messrs. Bremridge & Toller, of Barnstaple; and Messrs. Cree & Law, of London.

The Council have accordingly awarded them certificates of merit.

The Examiners have further announced to the following candidates, whose names are placed in alphabetical order, that their answers to the questions at the examination, were highly satisfactory, and would have entitled them to prizes or certificates of merit if they had not been above the age of twenty-six:—

James Cook the younger, who served his clerkship to Mess. Carslake & Barham, of Bridgwater; and Messrs. Torr, Janeway, & Tagart, of London.

Francis Hamilton Masters, who served his clerkship to Mr. Henry Hime, of Liverpool; and Messrs. Francis & Almond, of Liverpool.

George Andrew Rogers, who served his clerkship to Mr. Henry Hodgetts Deacon, of London.

Edmund Smith Wood, who served his clerkship to Messrs. Williams & Brydges, of Cheltenham.

The number of candidates examined in this term was 154; of these 148 were passed, and 6 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,
London, June 16, 1864.

Law Societies and Institutions.

LAW AMENDMENT SOCIETY.—The annual meeting of the Department of Jurisprudence and Amendment of the Laws of the National Association for the Promotion of Social Science, was held on Monday at the offices, 3, Waterloo-place, Pall-mall. Lord Brougham occupied the chair. It appeared from the Report, that since the union of the society with the Social Science Association, eleven meetings had been held, and six papers read. The document shewed the progress of the society in other respects, and on the motion of Mr. P. Urquhart, M.P., seconded by Sir E. Wilmot, it was adopted.

JURIDICAL SOCIETY.—At a meeting of the Juridical Society, held on Monday evening at the society's chambers, 4, St. Martin's-place, Trafalgar-square, Mr. Clark in the chair; Mr. F. Worsley opened a discussion on "Certain Propositions for the Relief of the Home Secretary from the present Responsibility on the Conviction of a Person for Murder, and to substitute an improved Procedure." After entering briefly into the question of capital punishment, and the changes that had taken place from time to time with respect to the prerogative of mercy, and pointing out some of the effects of the present system, and the public dissatisfaction it engendered, Mr. Worsley proceeded to propose, that the Home Secretary, after a conviction for murder, be relieved of his present responsibility, by the substitution by statute of the following procedure:—1. That on a trial for murder at the assizes, both judges of assize shall preside, and two judges of the superior court at such trial at the Central Criminal Court. 2. That on the conviction of the prisoner, judgment of death shall not be immediately pronounced, unless both the presiding judges, either at the Central Criminal Court or the Assizes, agree that the verdict is proper, and that such judgment should follow it. But if the said judges do not so agree, or agree that a sentence of penal servitude for life should be pronounced, it shall be lawful for them to pronounce the latter sentence in place of the capital sentence. 3. That nothing in this act shall affect the discretion of the said presiding judges to postpone either of the above sentences to the last day of the assizes, but they shall both personally preside at the delivery of the sentence of death. 4. That on the prisoner being called upon to receive sentence of death, he shall be allowed, either in person or by counsel, to state grounds of fact for the extension to him of the mercy of the Court, and it shall be incumbent on the said presiding judges to take into consideration such facts, or to receive and consider any petitions which may be then laid before them on behalf of such prisoner; and it shall be competent for them, if they see fit, to adjourn the passing of the sentence of death for their consideration of the said facts or petitions. 5. The sheriff shall not execute the sentence of death till ordered by the Home Secretary; and between the sentence and its execution, the said judges shall allow such time as they may deem reasonable for receipt and consideration

by them of any petitions or grounds which may be laid before them in favour of the condemned person's life, and at the expiration of such reasonable time the said judges shall report to the Home Secretary whether they are of opinion that the prisoner should be executed or sentenced to penal servitude for life, or pardoned; and the Home Secretary shall advise the Crown accordingly; and he shall not order the execution or other punishment of the condemned person until he have received such report from the said judges; and the Home Secretary shall transmit to them any petition he may receive in favour of the condemned person. 6. If the said judges, or either of them, report to the Home Secretary that an inquiry should be made into the sanity of the condemned person, the Home Secretary shall cause such inquiry to be made by competent persons, and on their certificate of the insanity of the condemned person the Home Secretary shall grant a warrant for his removal to a lunatic asylum. 7. That every prisoner on a charge of murder shall be tried by a jury, and shall not be called upon to plead. A discussion ensued, in which the Chairman, Mr. F. Lawrence, Mr. J. O. Griffiths, Mr. Edward Webster, Mr. C. H. Hopwood, and Mr. C. C. Massey took part. At the conclusion of the discussion, a vote of thanks to Mr. Worsley and another to the Chairman, brought the proceeding to a close.

Legal Education.

CAMBRIDGE, June 21.—In congregation this day, the following creations were made:—

Doctors of Laws.—William Haigh Brown, Pembroke College; James Ogilvy Miller, Christ's College; Herbert Broom, Trinity College; and Charles Joseph Hughes, St. John's College.

Masters of Laws.—Charles Evans Newbon, Trinity College; Jacob Henry Pattison, George Frederic Dean, and Frank Stanley Dobson, St. John's College; Robert Thomas Boulton, Trinity College; George William Marshall, St. Peter's College; and William Henry Davies Archer, Trinity College.

Appointment.

The Lord Chancellor has been pleased to appoint Samuel Horace Clarke Maddock, of No. 3, Spring Gardens, Gentleman, to be a London Commissioner to administer oaths in Chancery.

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THE JURIST.

LONDON, JULY 2, 1864.

IN two former articles (9 Jur., N. S., part 2, p. 49, and ante, p. 247) we have endeavoured to trace the fluctuations of judicial decision on two or three of the most important questions relating to creditors' deeds, under sects. 192-200, of the Bankruptcy Act, 1861. The points about which the greatest controversy has arisen have been as to the necessity of a *cessio bonorum*—as to what constitutes such unreasonableness in the provisions of a registered deed as to vitiate it—and also as to the effect of an intended exclusion or preference of any class of creditors, or an individual creditor. We are not certain, however, that great as have been the theoretical difficulties in reconciling the provisions of these "deed clauses" to pre-existing conceptions of law, still more serious embarrassment has not attended the practical attempts which have been made to give them effect. In passing the enactments which are comprised in sects. 192-200, the Legislature intended to place in the hands of the mercantile community a kind of self-regulating machinery which would require the least possible amount of professional assistance or official interference. The statute itself provides a form of deed which is to answer all ordinary purposes; and the statutory requirements, as to its execution and registration, have the recommendation, at least in appearance, of a charming simplicity. Having copied from Schedule (D.) the form of the deed, it is only necessary that a "majority in number, representing three-fourths in value of the creditors of such debtor whose debts shall respectively amount to 10*l.* and upwards, shall, before or after the execution thereof by the debtor, in writing, assent to or approve of such deed or instrument."

The execution of the deed by the debtor himself is required to be attested by a solicitor; but there is in the act no such provision as to its execution or adoption by creditors. All that it requires is "an affidavit by the debtor or some person able to depose thereto, or a certificate by the trustee," that such majority of the creditors had, "in writing, assented to or approved of" the deed.

Simple as the words, "a majority in number representing three-fourths in value," may seem to be, they very soon gave rise to one very important and difficult practical question, viz. whether, in estimating the "number and value" of the creditors, those who held securities, whether ample or deficient, were excluded wholly or pro tanto the value of their securities; and in the latter event, whether there was any practicable mode of ascertaining the value of the securities, for the purpose of arriving at the proportion of indebtedness remaining unsecured? Neither the statute, nor the General Orders which came into operation along with it, contained any provision touching the point; and accordingly, it has ever since been a serious practical puzzle to the majority of persons who desire to make an honest use of the machinery provided by this part of the act; while it has no doubt proved

very convenient to many others, who have been thus enabled to force from their unsecured creditors terms which would not have been otherwise conceded by them, and which secured creditors were willing to concede only because, in fact, they had no real interest in the matter.

Strange to say, this question has not yet been definitively settled by paramount authority, although it has been raised more than once or twice, and has been directly the subject of judicial decision. The case of *Ex parte Godden, re Shettle* (1 De G., J., & S. 260), expressly raised the point now under consideration; and the judgment of the Lords Justices might be considered as conclusive on the question, if there were no conflicting authorities. Their Lordships were of opinion, that in reckoning the proportion of assenting creditors, under sect. 192, the debts due to secured as well as to unsecured creditors must be taken into account. Lord Justice Knight Bruce considered that the word "creditors" ought to receive "a literal interpretation, an interpretation in conformity with grammar and idiom." Lord Justice Turner's view was the same in effect. Both their Lordships considered that they were not at liberty, and certainly that they were not compelled by any inconvenience likely to arise from such an interpretation, to do otherwise than give a grammatical construction to the words of the act. No doubt, it may be forcibly argued, that the result of this view will be, in many cases, to place the unsecured creditors completely at the mercy of those who hold sufficient security, and who, therefore, have no real interest in the estate to be administered under the deed; and thus the debtor will be enabled, by means of the friendly co-operation of the latter, to force the former to favourable terms. But, on the other hand, it would be equally unfair to exclude all creditors holding any security, however insufficient it might be; and a very common case is that of a secured creditor, with a security not quite covering his debt.

One would think that the most rational course to adopt, under these circumstances, would be to provide some mode for the valuation of securities where creditors in possession of them allege that they are insufficient, and desire to come in under a creditors' deed. This would at once put an end to all questions, whether secured creditors should be reckoned, in respect either of number or value, and would remove one of the most serious obstacles to the adoption of these statutory deeds; but neither the act nor any General Order has condescended to such useful details, although many other particulars, quite as minute, are to be found in both. It is, therefore, necessary to proceed with our investigation of the judicial decisions on this subject. We have seen that the Lords Justices have distinctly pronounced upon it, albeit with some plaintive remonstrances from Lord Justice Knight Bruce, upon the task which the Legislature had imposed upon the Court. Their Lordships' decision has recently come under the consideration of the Court of Common Pleas, and been unanimously adopted by the four judges who presided on the occasion, including Lord Chief Justice Erle. This

was in the case of *Turgand v. Moss* (12 Weekly Rep. 960.) If, therefore, there were no other authorities upon the question, it might now be deemed to be conclusively settled, however inconvenient and sometimes unjust the practical result might be. But the Lord Chancellor evidently entertains a different view. In *Ex parte Spyer* (9 Jur., N. S., part 1, p. 950) his Lordship remarked, that "creditors under a deed of trust are put in the same position in which creditors under a fiat are placed by the bankrupt law. Secured creditors, therefore, rank under the deed of trust for the amount remaining, after deduction of the value of their securities." And again, in *Ex parte Morgan* (Id. 559), his Lordship made an observation to the same effect—"Creditors under a trust deed are in eodem statu as creditors under a bankruptcy. But creditors under a bankruptcy cannot prove without allowing for the value of their securities, and creditors under trust deeds are subject to the same obligation."

In a more recent case before the Lord Chancellor (*Ex parte Smith*), his Lordship has been called upon to reconsider these dicta in the light of the opposite decisions to which we have referred; and after a second argument of the case, judgment has been reserved; so that, no doubt, we shall shortly be in possession of the Lord Chancellor's decision. It is manifest, however, that, whether he supports his own dicta, or the opposite decisions, abundant inconvenience, if not injustice, will remain. If secured creditors are to have a voice where they have no interest, it must often work injustice. If creditors are to be wholly excluded because their debt is partially covered by security, that will also be productive of injustice; but either of these two courses appears to be at present inevitable, since no means are provided for arriving at a valuation of securities so as to prevent secured creditors from interfering further than to the degree in which they are unsecured.

It is evident that this serious defect in the machinery of the statute will require a speedy remedy, unless the whole scheme of registered deeds is to be given up. A new General Order in Bankruptcy, which has just been issued, requires, that every deed presented to the Chief Registrar for registration under the act, shall in future be presented by a solicitor, and that every memorandum delivered with such deed shall be signed by a solicitor. This Order has been issued in consequence of the serious and constant complaints that have been made as to the manner in which these deeds have been contrived and managed by law stationers, accountants, and others, who, not being officers of the court, have felt themselves very much at liberty to disregard the risk of its censure. All that the Chief Registrar can do when one of these deeds is brought for registration, is to see that, *ex facie*, there is a compliance with the requirements of the statute. But not only is he without any instructions as to the relative rights of secured and unsecured creditors, but he has no means of judging whether the creditors who are alleged to have assented have really done so, or whether, as in the case of *Re Rawlings* (1 De G., J., & S. 225), the assent was purely hypothetical or conditional. The only assurance to the registrar, that the conditions of sect. 192 have been observed, was, as we have seen, an affidavit "by some person," or "a certificate by the trustee," to such effect. A memorandum of this kind, signed by a solicitor, will henceforth be required in every case, and it will, of course, be his duty to satisfy himself, that no fraudulent or reckless use is made of the machinery of the act.

Books.

Principles of Conveyancing, Explained and Illustrated by Concise Precedents. With an Appendix on the Effect of the Transfer of Land Act in modifying and shortening Conveyances. By HERBERT LEWIS, B.A., late Scholar of Emmanuel College, Cambridge, of the Middle Temple, Barrister-at-Law. Seco., pp. 518. [Butterworths.]

ALTHOUGH Mr. Lewis's work displays both ability and learning, we think that hereafter its author will regret the publication of it, and wish that he had limited himself to the carrying out of his main, but somewhat superfluous, design, which, he says, was "to supply something to bridge over the passage from the study of the law of real and personal property to that of the application of its principles to the preparation and construction of conveyances." "The many volumes of precedents in conveyancing already published," he adds, "contain principally forms which were devised and arranged to meet the exigencies of actual practice, and which are, therefore, valuable to the practitioner, but which on that very account are not generally suitable for the instruction or comprehension of a beginner. Such forms often substantially embrace several conveyances in one instrument, and contain special modifications designed for peculiar circumstances; are generally laden with much verbiage, and many clauses whose use has become obsolete; and, finally, are arranged for convenience of reference rather than for purposes of instruction. Further: the notes and dissertations which usually accompany such precedents are chiefly directed to the explanation of their peculiarities, and but little to those ordinary and generic portions which the practitioner is supposed to understand, but in respect of which the student is most in want of information."

"It is no wonder, then, that in perusing such volumes an inexperienced person is at a loss to discriminate between what is useful, essential, accidental, or generic, and what is simply useless and burdensome, in the several precedents they contain; and that, as a consequence, it is not too much to say, that many, even after the advantage of a course of study in a conveyancer's chambers, often commence practice with very misty and inadequate notions of the real use and object of the various clauses of a conveyance, and of the true principles on which they should be framed."

We do not know what work was in Mr. Lewis's contemplation when he wrote these remarks, but if they refer to the collection, now principally in use, of Mr. Davidson, ably edited by Messrs. Wright and Whaley, nothing can be more unjust. The precedents are simple and intelligible, contain no obsolete matter, and are expressed with at least as much brevity as suits the habits and wishes of the profession at large. The general rules of law on which they depend, and the object to be kept in view in framing or adapting them to use, are well explained in the dissertations, while the notes supply information on matters of detail where it is required. Certainly, the traveller who requires a bridge between Josh. Williams and Davidson had better seek easier ground than he will find in the Alpine region of the law. Mr. Lewis says, that "he has endeavoured to introduce the reader to the novelties and difficulties of the subject by degrees; and thus he hopes to lead the student on from step to step." If this means anything different from that logical and systematic arrangement and development of the subject which every institutional writer aims at, and which is common to the Principia and the most elementary school book, it means, a futile attempt to degrade the sub-

ject to "the level of the meanest capacity," which the meanest capacity will resent.

For a book, on any subject, written with such a design, there is no room. There was, however, room for a book on the structure and interpretation of deeds and other instruments generally, as distinguished from the details of particular classes of instruments; and though Mr. Lewis has not sketched even a complete outline of such a treatise, he has collected and set forth (in a style not more elegant and exact than that of the above extracts) a great deal of useful information of this kind, the value of which, however, is often impaired by the intermixture of the author's novel and somewhat rash deductions.

After explaining, with more or less of success, the "primary object and design of the book," Mr. Lewis proceeds thus:—"But the author is well assured that a tendency to cultivate brevity is now becoming very general among draftsmen, especially in the country; and he has, therefore, studied to select his precedents, and frame his observations, with a view to practical utility, and so as to afford information to draftsmen desirous of safely abbreviating such conveyances as they may actually be called upon to construct." This sentence, inaccurate and redundant, is a fit introduction to the precedents which our author has abbreviated, according to our judgment, neither wisely nor well. A few extracts from a single example—the precedent (No. 13) of a mortgage of freeholds—will be sufficient to illustrate the rash carelessness of this "pioneer in an almost untrodden path."

"Provided always, and the said B. doth hereby for himself and his heirs, covenant with the said A. and his heirs, that if the said A. or his assigns shall, on or before the — day of —, repay to the said B., his heirs, executors, administrators, or assigns, the said sum of £—, together with interest for the same in the meantime after the rate of 5l. per cent. per annum, without any deduction or abatement whatever, then the said B. or his assigns shall and will, at any time thereafter, upon the request, and at the costs and charges of the said A., reconvey the said hereditaments and premises unto the said A., his heirs or assigns, or as he or they shall direct, free from all incumbrances whatsoever made or permitted by the said B."

Here, all the words which we have printed in italics are unnecessary, while two of them (allowing of repayment before the day, and to the heirs of the mortgagee) are wrong; and yet, in straining after brevity, many essential words have been struck out, so that no provision is made for redemption on repayment by the heirs, or by the executors or administrators of the mortgage; or for reconveyance by the heirs of the mortgagee; or for reconveyance at the request of the heirs or of the assigns of the mortgagor; or against incumbrances by the heirs, executors, administrators, or assigns of the mortgagee. It is true that some, perhaps all, of these omissions might be supplied by a liberal exercise of equitable jurisdiction; but when a draftsman undertakes to provide for the doing of certain things, it is his business to express completely and exhaustively, in clear (which may be also concise) language, under what conditions, and by whom, they are to be done. Mr. Lewis gives at great length, and in a style quite sufficient to confuse a weak-minded student, reasons for some, but not for the greater part, of his omissions.

In another precedent (No. 16, mortgage in fee by way of condition or executory use), the author appears to have pursued novelty with more eagerness than discretion. "This precedent," he says, "is an attempt to effect a mortgage such that the lands shall revert in the mortgagor and his assigns, without the intervention of a reconveyance, on a simple repayment of the

mortgage money, acknowledged by the parties entitled to it, and which yet shall afford the mortgagee all the security necessary for the recovery of his money, and enable the parties taking the mortgage debt alone to sell, and make a good title to the purchaser." The operative part of the deed commences thus:—"Now, this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of £— accordingly this day paid by the said B. [the mortgagee] (the receipt whereof the said A. [the mortgagor] doth hereby acknowledge), he, the said A., doth hereby grant unto the said B. all that [parcels], to hold the same unto the said B. and his heirs, to the use of the said B. and his heirs: *Provided nevertheless, and on condition, that if the said A. (the mortgagor) shall, before the expiration of twenty-one years from the decease of the survivor of them, the said A. and B., pay to the said B., his executors, administrators, or assigns, the said sum of £—, together with interest in the meantime thereon, or on so much thereof as may for the time being be unpaid, after the rate of 5l. per cent. per annum, regularly half-yearly, on the — day of —, and the — day of —, in every year; and if the said B., his heirs, executors, administrators, or assigns shall, within the period aforesaid, acknowledge the payment of the said moneys in manner aforesaid, by signing the memorandum on these presents indorsed (and which memorandum so signed shall be conclusive evidence to satisfy this condition, of the payment of the said moneys in manner aforesaid), then these presents and the estate hereby granted shall immediately cease and be void. Nevertheless, and it is hereby agreed and declared, that this present proviso or condition shall not have the effect of prolonging or extending any right or equity of redemption of the said A., or those claiming under him, any further, or for any longer period than he or they would have been entitled to such right or equity, if this proviso or condition had provided that the grant should be void only on payment in manner aforesaid of the said moneys, on the — day of — next ensuing. And the said A. doth hereby, for himself and his heirs, covenant with the said B., that he, the said A. or his assigns, will, on or before the expiration of the said period, but if and whenever requested so to do by the said B. by notice in writing, then on or before the expiration of six calendar months from the receipt of such notice pay to the said B. or his assigns the said sum of £—; and also will in the meantime pay to the said B. or his assigns interest on the said sum of £—, or on so much thereof as shall for the time being be unpaid, after the rate of 5l. per cent. per annum, half-yearly, on the — day of —, and the — day of —, in every year.*" Then follows a proviso against paying off the mortgage without notice, and then this covenant:—"And the said B. doth hereby, for himself and his heirs, covenant with the said A., that on payment, in manner mentioned in the proviso hereinbefore contained, of the said principal moneys and interest, he will forthwith sign, or procure to be signed, the said memorandum indorsed on these presents in manner hereinbefore provided." Then follow covenants for title; a covenant for quiet enjoyment by A. during six months; a power of sale by the mortgagee, his executors, administrators, or assigns; and a covenant not to exercise the power without notice. The form of the memorandum of payment is not given; and there no power is given to the mortgagee to let—an omission which is, indeed, judicious, inasmuch as the performance of the condition for divesting the estate would defeat the mortgagee's leases.

We have printed the superfluous words in italics: and it will be observed, that the omission of those which occur in the proviso as to the equity of redemption will

also make the sentence grammatically coherent. In substance, as in language, the condition for divesting the estate, and its attendant clauses, are redundant and inaccurate. The intention is, that the signature, by the person for the time being entitled to the mortgage debt, of an endowed acknowledgment of satisfaction, shall determine the fee; and it would have been sufficient (if the scheme were admissible in any form) to say so. But our author first says, that the estate shall cease on payment of the money, and signature of the memorandum; and then he says, that it shall cease on signature of the memorandum, whether the money is paid or not. Further, he says, that signature of the memorandum, either by the heirs or by the executors or administrators of the mortgagee, shall determine the estate. This not only confers on the heirs a power which they ought not to have, and provides occasion for difficult questions between them and the executors or administrators, but adds another complication to the difficulty of determining the meaning of the word "assigns" in the proviso. If the heirs can determine the legal estate, can their assigns? and if so, must every individual in whom the least scrap of legal title is vested, including a tenant at will, concur; or can each particular assign determine his own particular estate, leaving the others outstanding? If "assigns" means or includes assigns of the debt—which is a chose in action—does it include trustees, with or without a power of attorney, and exclude beneficiaries, or how otherwise? A proviso for vesting or divesting a legal estate ought to indicate with absolute certainty the conditions on which it is to take effect.

The covenant for payment of the debt gives to the mortgagor for payment twenty-one years after the death of the survivor of the parties, unless the mortgagee can prove service on the mortgagor or his assigns personally of a demand of payment, made in writing by the mortgagee; and then he has six months' grace. No provision is made for a demand by the executors, administrators, or assigns of the mortgagee, or upon the executors or administrators of the mortgagor; and we are not so well satisfied as Mr. Lewis seems to be, that the law would, in an action of covenant or debt, supply these omissions, whether with the help or in spite of the discrepancies between the covenant in question and the mortgagee's covenant not to sell until after six months' default in payment pursuant to a demand of payment made by the mortgagor on the mortgagee or his heirs.

Lastly, it is to be remarked, that the mortgagee covenants, that if the mortgagor pays the money at any time within the twenty-one years after the death, &c., he will *forthwith* sign the indorsed memorandum, and the mortgagor expressly reserves power to pay off the debt at the end of that remote period, without giving any previous notice to the mortgagee to find a fresh investment.

Inaccurate language always indicates incompleteness or error in conception. Whether the error in the following passage is due to mere confusion of ideas, or to a distinct mistake of the law, may admit of question. The writer is speaking of conditions for entry:—"We must add, that the entry for non-render of rent and other services, though originally it was in right of a forfeiture caused by such non-render, is now only allowed for the purpose of distraining the goods and chattels to be found on the land, and not for the purpose of permanently resuming the possession of the land." And for this we are referred to Tudor's L. C., R. P., 174. We need scarcely say, that Mr. Tudor's learned and accurate commentary on *Clun's case* does not sanction this statement.

While commenting on the defects of the statutory

power to appoint new trustees contained in the stat. 23 & 24 Vict. c. 145, s. 27, Mr. Lewis says, "It has been doubted whether a surviving or continuing trustee, who is not also surviving and continuing, can appoint under the act; and it has been held that the act does not apply to the case of all the trustees retiring simultaneously (*Stones v. Rowton*, 17 Beav. 308); and other difficulties have arisen." Now, the clause in question is defective enough, but it has not been held that it does not apply to the case of all the trustees retiring simultaneously. The act was passed in 1860; *Stones v. Rowton* was decided in 1853, upon the construction of a power very different from that in Lord Cranworth's Act. The question upon the power in that act will be, what is meant by "the last retiring trustee?" taking in aid the enactment in the 13 & 14 Vict. c. 21, s. 4, that one shall mean many.

On the whole, we think, that though the work contains much valuable information, and many useful hints, it is so disfigured by faults of style and errors of judgment, as to be unfit for the use of students.

A much more promising attempt to introduce short forms was made, some years ago, by Mr. Herman L. Prior, in his "Complete Manual of Short Conveyancing," the forms in which are extremely concise and well expressed, and are for the most part sufficiently comprehensive. But Mr. Prior's forms have not come into use, nor can any such forms come into use until the conditions of professional remuneration are altered.

GENERAL ORDER.

THE BANKRUPTCY ACT, 1861.—June 24, 1864.

IT IS ORDERED, that every deed or other instrument presented to the Chief Registrar for registration under the above-mentioned act, shall, after the 30th day of June instant, be presented by a solicitor of the Court of Bankruptcy, and that every memorandum delivered with such deed or other instrument shall be signed by such solicitor.

WESTBURY, C.
EDWARD HOLROYD.
EDWARD GOULBURN.

FRIENDLY SOCIETIES.—ALTERATION OF RULES.

THE registrar of friendly societies in England, having received from members of such societies inquiries as to the effect of the alteration of rules, has thought it right to lay a case before the Attorney-General on the subject. The following is a copy of such case, and the Attorney-General's opinion thereon:—

CASE.

"A society was established in the year 1830, under the Friendly Societies Acts, for the purpose of insuring to each member, paying a certain monthly contribution, a fixed weekly sum in sickness, a fixed weekly allowance after sixty, and a certain sum at death.

"By the acts in force at the time of the establishment of the society, alterations in the rules might be made, and, when certified, were to be binding on the several members and officers of the society. (See 10 Geo. 4, c. 56, s. 9).

"By the present Friendly Society Act, 18 & 19 Vict. c. 63, s. 27, the rules may be altered by a resolution of a meeting specially called for that purpose.

"Under the 10 Geo. 4, c. 56, s. 9, the votes of three-fourths of the members present at a general meeting were required to carry any alteration; but under the

18 & 19 Vict. c. 63, s. 27, a simple majority of the votes of the members present is sufficient.

"In consequence of the funds of the society being much reduced, it is intended to frame new rules, which it is proposed to have certified, either increasing the contributions payable by the members, or reducing the benefits in sickness, old age, and at death; and these new rules are to apply to all the present as well as the future members.

"It is contended on the one hand, that as the present members joined with a knowledge that the rules might be altered, they have no reason to complain of the new rules, whilst on the other hand it is contended, that these new rules cannot affect the present members, as that would be a breach of the contract made with the members when they entered the society; and that, although the rules may be altered, there is no provision in the act as to altering the tables; but on this point it is presumed, that as the tables are referred to in the rules, they are incorporated with them, and might be repealed.

"The Attorney-General is requested to advise whether the altered rules will be binding upon the members admitted into the society before such rules were certified."

OPINION.

"I am of opinion that the altered rules will be binding upon the members admitted into the society before the new rules were certified, except as to any relief, annuity, or other benefit from the funds of the society, of which any member (or the wife, nominee, or child of any member) may be then in the actual receipt, or entitled to the actual receipt, under the existing rules. With regard to all future prospective and contingent benefits, the rights to which may not, at the time of making the new rules, have become vested and absolute by reason of any event then already past, the new rules will, I think, be binding upon all the members.

"In order to make the new rules valid, they must be made in a manner conformable to the provisions of the 10 Geo. 4, c. 56, s. 9, and by the majority of three-fourths there required.

"June 11, 1864. "ROUNDELL PALMER."

Imperial Parliament.

HOUSE OF LORDS.—Thursday, June 23.

ROYAL ASSENT.

The Royal Assent was given by commission to the following bills:—Under-Secretaries Indemnity; Registration of County Voters (Ireland); Local Government (Supplemental); Naval Agency and Distribution of Naval Prize; Naval Prize Acts Repeal; Chain Cables and Anchors; Common-law Procedure (Ireland) (1863) Amendment; Insane Prisoners Act Amendment; Court of Justiciary (Scotland).

The Lords Commissioners were the *Lord Chancellor*, the Duke of Argyll, and Lord Wensleydale.

FACILITIES FOR DIVINE SERVICE IN COLLEGIATE SCHOOLS BILL.

After some debate, this bill was read a second time, and was ordered to be committed on Tuesday, July 5.

BEER-HOUSES (IRELAND) BILL.

This bill was read a second time.

COUNTY CONSTABULARY SUPERANNUATION BILL.

This bill also was read a second time.

VACATING OF SEATS (HOUSE OF COMMONS) BILL.

This bill passed through committee.

BANKING CO-PARTNERSHIPS BILL.

This bill also passed through committee.

Friday, June 24.

THE ARMY PRIZE (SHARES OF DECEASED) BILL.

This bill was read a second time.

BEER-HOUSES (IRELAND) BILL.

This bill passed through committee.

VACATING OF SEATS BILL.

This bill was read a third time, and passed.

BANKING CO-PARTNERSHIP BILL.

This bill was read a third time, and passed.

Monday, June 27.

CIVIL BILL COURTS (IRELAND) BILL.

This bill was, after a short discussion, read a second time.

ARMY PRIZE (SHARES OF DECEASED) BILL.

This bill passed through committee.

BEER-HOUSES (IRELAND) BILL.

This bill was read a third time, and passed.

Tuesday, June 28.

BROKERS' BONDS AND RENTS BILL.

Lord Taunton moved the second reading of this bill.

Lord Kingsdown moved that it be read a second time that day six months.

After a short discussion, the amendment was agreed to without a division. The bill was, therefore, lost.

VALUATION OF RATEABLE PROPERTY (IRELAND) BILL.

This bill was read a second time.

CHIEF RENTS (IRELAND) BILL.

The Commons amendments on this bill were considered, and agreed to.

COUNTY CONSTABULARY SUPERANNUATION BILL.

This bill passed through committee.

CATHEDRAL MINORS' CORPORATIONS BILL.

This bill was read a second time.

PILOTAGE ORDERS CONFIRMATION BILL.

This bill was read a second time.

PIERS AND HARBOUR ORDERS CONFIRMATION BILL.

This bill was read a second time.

COVENTRY FREE GRAMMAR SCHOOL BILL.

This bill passed through committee.

ARMY PRIZE (SHARES OF DECEASED) BILL.

This bill was read a third time, and passed.

COUNTRESS OF ELGIN'S ANNUITY BILL.

This bill was read a third time, and passed.

HOUSE OF COMMONS.—Thursday, June 23.

STAMP DUTY ON BANKERS' ORDERS.

Mr. Alderman Salomons asked the Chancellor of the Exchequer whether it was true that an order addressed to bankers or other persons for any payment of money, whether as dividend or otherwise, and which hitherto had been exempt from stamp duty, as being neither a letter nor a power of attorney, was, by a new construction put by the Commissioners of Inland Revenue on the act of the present session, to be made liable to the duty of 5s., or any other duties charged on letters or powers of attorney; and if so, whether such new construction would not be a great hardship on individuals, and an interference with established usage.

The Chancellor of the Exchequer thought his hon. friend was under a mistake as to his facts. The act of the present session had no bearing, except to reduce the existing duties. No new construction had been placed on the law as it now stood, and as it stood up to the passing of the act of the present session. Some persons having felt a doubt whether orders of the character referred to, and which were in extensive use, were liable to stamp duties as powers of attorney, an opinion of the law officers of the Crown had been taken, and that opinion was that such orders were liable. The date of that opinion was as old as December, 1860. The question was not one of the revenue department, and there were penalties for not using the stamps. The question was simply one bearing on the legality of the instruments if contested in a court of law.

WEIGHING OF CORN.—PORT OF LONDON BILL.

This bill was read a second time.

Friday, June 24.

THE HIGHWAY ACT.

Mr. Dodson asked whether, under the Highways District Act of 1862, the towns not subject to the jurisdiction of the

board, but adjoining or surrounded by highway districts, were legal places for the meeting of the boards.

Sir G. Grey.—Under the Highway Act of 1862 some doubts existed on this point, but by an amendment to the Local Government Act made last session, towns adjoining or surrounded by highway districts were constituted legal places for the meeting of the highway district boards.

REMOVAL OF PAUPERS AND CRIMINALS FROM JERSEY TO SOUTHAMPTON.

Mr. D. Seymour rose to call the attention of the House to the system pursued of removing paupers and persons under sentence of banishment from Jersey to the seaports of England, especially Southampton, and to ask the Home Secretary whether he had received any report upon the subject from the Lieutenant-Governor of Jersey. He said that he had previously brought the question before the House upon a memorial from the corporation of Southampton, complaining that people under sentence for crime, and paupers, were provided with a free passage from Jersey, and shipped to Southampton and other ports, where they became a burthen to the ratepayers. He had fortified himself with evidence upon the subject, and he found that in 1847 the commissioners on the state of the criminal law in the Channel Islands, and in 1859 the civil law commissioners of Jersey, alike in their reports shewed that this was the practice of the authorities there. The town clerk of Southampton had written to him, stating, that since July, 1861, to December, 1863, no less than thirty-two persons either under sentence of banishment, or paupers who had no settlement in Jersey, had in this way been deported, become chargeable to the rates, and in that time cost the parish not less than 250*l*. It appeared, too, that persons convicted of heinous crimes in Jersey were brought in, with the permission of the Home Office, to the English hulks, and there kept to serve out their time at the expense of the English nation. According to statistics, it had been ascertained that free passes to paupers to leave the island amounted in 1861, 1862, and 1863 to 1080, representing 1500 persons, or 500 persons a year. He thought this was a state of things which ought to be put an end to. The statement in the petition, that burglars and others convicted of similar offences were so removed was, he believed, a mistake; but so far as regarded persons under sentence for minor offences, and the wholesale deportation of paupers, he maintained that the practice he had complained of was still the law, and in operation.

Sir G. Grey said, he had received a report from the Governor of Jersey upon the subject; but as the memorial of the town council of Southampton did not refer to paupers, the report of the Governor only related to persons charged with crime. He thought the best plan of affording information on the subject would be to produce the memorial from the corporation of Southampton, his letter to the Governors of Jersey and Guernsey in reference to the matter, and their replies. If the hon. member would move for these documents, they should be laid on the table of the House.

THE ADMIRALTY COURT OF IRELAND.

Mr. Maguire asked the Attorney-General for Ireland when he would lay upon the table the promised bill for regulating and reforming the Irish Court of Admiralty, and what his intentions were with regard to that measure. He said, that when he (Mr. Maguire) brought in a bill last year for assimilating the Court of Admiralty in Ireland to that in England, he was sustained by memorials in favour of the measure from some of the foremost commercial bodies in the United Kingdom. The Irish Court had not been reformed for the last fifty or sixty years, while the Court in England had been reformed several times. Any difficulty attending assimilation of jurisdiction would be alight, compared with the benefit the change would bring to the public. The report of the commission was unanimous in favour of the assimilation between the practices of the two countries. On economical grounds, the diminution of charge in England had been attended with the most satisfactory results; for since the diminution, the fees had increased from 2000*l*. a year to 9000*l*. a year. The commissioners were opposed entirely to handing the jurisdiction over to any of the common-law judges, or to the Court of Probate. The chambers of commerce, and the consuls of foreign nations generally, were wholly in favour of assimilation. He hoped the Government

would not neglect the demand which the public interests required, but state that they were ready to legislate on the subject.

The Attorney-General for Ireland said that, as one of the commissioners, he could only indorse the report, which, however, had only been issued a few days ago. Not an hour should elapse without the subject being considered by the Government, although he could not pledge himself that the state of public business this session would afford an opportunity for the introduction of a measure during the present year.

INLAND REVENUE (STAMP DUTIES) BILL.

The House went into committee on this bill.

Clauses 1 to 15 inclusive, after some discussion, were agreed to.

Clause 16 was, on motion of the *Chancellor of the Exchequer*, postponed.

The Chancellor of the Exchequer moved the introduction of a clause for the payment of taxes in Scotland by post-office orders, which was agreed to, and the bill reported, with amendments, to the House.

CHIMNEY SWEEPERS REGULATION BILL.

The House went into committee on this bill. The several clauses were agreed to without amendment.

WEIGHING OF GRAIN (PORT OF LONDON) BILL.

This bill went through committee pro forma.

COURT OF CHANCERY (IRELAND) BILL.

After some discussion, the debate was adjourned until Monday.

DRAINAGE AND IMPROVEMENT OF LAND (IRELAND) BILL.

This bill was read a second time.

RAILWAYS (IRELAND) ACTS AMENDMENT BILL.

This bill passed through committee.

Monday, June 27.

PENAL ACTS AMENDMENT BILL.

Mr. Hunt gave notice of his intention to move an amendment to this bill, restoring the obligation to ticket of-leave convicts to report themselves monthly to the police.

LIABILITIES OF BARRISTERS ON ADMISSION TO THE BAR.

Colonel Bartolot asked the Attorney-General whether gentlemen becoming members of Lincoln's-inn had any, and what, means of ascertaining the pecuniary liabilities to which they thereby became subject, and whether the benchers claimed a power to alter their liabilities during their membership without their knowledge, and what restrictions there were to affect a member who desired no longer to remain a member of the inn.

The Attorney-General, in reply to the first question, said the hon. member could obtain the necessary information from the steward; to the second, that the benchers claimed only such power as every gentleman of the bar conceded by the form of his admission bond; to the third, that a gentleman wishing to retire had to give notice that he was no longer in practice, or that he meant to withdraw from practice, and pay a very small fee, after which he could retire.

STATE OF THE LAW COURTS.

Mr. M. Smith rose to call the attention of the House "to the buildings and sheds used for the superior courts of law and equity, and the inadequate accommodation afforded by them; and also to the delay on the part of the Government to introduce their promised measures for providing new courts of justice." The hon. member said he thought the question of the places in which the law of this country was administered, so as to be worthy of the country, was of greater importance than picture galleries and museums of art, useful even as those might be. The state of the courts of law was as bad as it was possible for them to be. In his notice he had used the term "buildings and sheds," and he thought the latter had fairly described many of the places in which courts of justice were held. The hon. member then referred to the generally unsatisfactory condition of the courts of common law at Westminster and Guildhall, and of the courts of equity at Lincoln's-inn, and expressed a hope that proper provision for the due and decent administration of justice would soon be made.

Mr. Mathins said, that four years ago the Lord Chancellor

had told him to wait two years longer, and adequate law courts would be provided; but at the end of four years the matter was in statu quo. He would rather accept the proposal of the Society of Lincoln's Inn, to build three Vice-Chancellors courts within the inn than that the present state of things should continue.

The Attorney-General said, that certain interests had led, very much against the wish of the Lord Chancellor, to the delay that had taken place. He hoped to lay a bill on the table in a very short time on the subject, though at that period it would depend upon the facilities granted by the House whether it passed this session. At any rate, if it should not pass, an opportunity would be given of maturely considering it before next session. He agreed with the hon. and learned gentleman that the evil and scandal of the present state of things could not be exaggerated. It was of the greatest importance that the courts of common law, the courts of equity, and all the offices connected with them, should be placed on a more satisfactory footing. In his opinion, no scheme could be satisfactory which did not lay them all so near to each other as to give the greatest possible facility for the dispatch of business to those connected with the administration of justice. He was not prepared to agree to any arrangement that would permanently separate the courts of equity and the courts of common law. The Government was anxious, before introducing another bill on the subject, to be quite sure of their ground with regard to all the arrangements, more particularly those connected with the pecuniary department of the question. At the same time they were desirous to arrive at some plan which would avoid throwing any charge on the public purse; and it was thought that that might be accomplished by taking funds, amounting to 1,800,000*l.*, available for such a purpose, in the Court of Chancery. It would be necessary, in his opinion, to reserve a portion of that fund, in order to recoup advances made on account of annual charges. It was proposed to have an advance of 300,000*l.* by the public loan commissioners to reimburse them of a portion of it over a considerable number of years; and it was also proposed that fees of small amount should be levied on steps in proceedings in these new courts that did not contribute any portion of the Chancery funds. In that way the Court of Chancery would contribute funds that might be said to belong to nobody. Such was an outline of the plan contemplated by the Government. And even now a measure might be passed founded upon it; at all events, a bill framed on that plan would be laid on the table, and an opportunity would be given for considering it before next year.

Mr. Selwyn said, if the Government were really desirous of remedying the evil, they should bring in a bill on the subject; but as far as the equity courts were concerned, a remedy might be found without any expense to the public, through the offer of Lincoln's Inn. Concentration of the law courts could not be carried out altogether. The bill of 1859 might be revived; it might be passed in a few days, and the work accomplished next year. The courts of equity would then be all that was wanted, and at no expense whatever; and this part of the work having been accomplished, there would remain to be effected the provision for the law courts in a contiguous or distant locality, perhaps on the new Thames Embankment.

Mr. Cooper believed that what the hon. and learned gentleman proposed would be totally inadequate even for the equity courts, while it would not even touch the requirements of the courts of law. Instead of accepting in 1859 the offer of Lincoln's Inn, the then Government appointed a Royal Commission to consider a proposal for the concentration of the courts; that commission made their report, which met the approbation of the public; it was the duty of the present Government to carry out the scheme they recommended, and the House of Commons would not do their duty if they abandoned those recommendations.

Lord Hotham asked who had been selected as the architect. Mr. Cooper replied that the architect was to be selected by competition, as had been stated from the first. The subject then dropped.

FACTORY ACTS EXTENSION BILL.

This bill passed through committee.

RAILWAY CONSTRUCTION FACILITIES BILL.

This bill was read a third time, and passed.

SHERIFF SUBSTITUTE (SCOTLAND) BILL.
This bill was read a second time.

COURT OF CHANCERY (IRELAND) BILL.
This bill was postponed till Monday, July 4.

MORTGAGE DEBENTURES BILL.
This bill was read a second time.

INLAND REVENUE (STAMP DUTIES) BILL.
This bill, as amended, was considered.

CHIMNEY SWEEPERS REGULATION BILL.
This bill was read a third time, and passed.

CONTAGIOUS DISEASES BILL.
This bill was read a second time, and referred to a select committee.

Tuesday, June 28.

THAMES CONSERVANCY BILL.
This bill passed through committee, and was reported, with amendments, to the House.

LUNACY (SCOTLAND) BILL.
The House went into committee on this bill, and after a short discussion the bill was agreed to.

ADMINISTRATION OF TRUSTS (SCOTLAND) BILL.
The House went into committee on this bill, and the several clauses were agreed to, with some formal amendments.

GAOLS BILL.
Mr. Newdegate said, that this being the week when the quarter sessions were held in the various counties, it would be convenient to many hon. members if the right hon. gentleman, the Home Secretary, would state when he intended to proceed with the Gaols Bill.

Sir G. Grey said he thought the best plan would be to commit the bill pro forma, with a view to its being reprinted with amendments; and, when this was done, he would name the day for further progress with the measure.

OPEN SPACES NEAR THE METROPOLIS.
Mr. Doulton called the attention of the House to the gradual diminution of open spaces in and around the metropolis, and moved that it was the duty of her Majesty's Government to provide for the preservation of such open spaces within the limits assigned by the 14th section of the Inclosure Act of 1845. The hon. member said, that the common lands around London were being very generally inclosed and appropriated to building purposes, without authority. He hoped that the Government would introduce a bill conferring upon some public body the power of dealing with the question.

Mr. W. Williams seconded the motion.
Some discussion then ensued upon the subject.
Mr. Torrens suggested that the Attorney-General should be the officer appointed for taking the initiative in all cases of encroachments.

Mr. Cooper suggested that, instead of the resolution proposed, a committee should be appointed to inquire into the subject.

The House then divided, when there were					
For the motion	79				
Against	40				
Majority	39				

BLEACHING AND DYEING WORKS EXTENSION.
On the motion of Mr. Bruce, leave was given to bring in a bill to place the employment of women, young persons, and children in the occupation of finishers, hookers, lappers, and makers-up and packers in warehouses, under the regulations of the Bleaching and Dyeing Works Acts Extension.

WEIGHING OF GRAIN (PORT OF LONDON) BILL.
On the motion of Mr. Crawford, the following committee were nominated the select committee on the Weighing of Grain (Port of London) Bill:—Mr. Crawford, Sir John Shalvey, Mr. Alderman Rose, Mr. Ayrton, and Mr. Francis William Russell, and five members to be nominated by the committee of selection.

On the motion of Colonel W. Patten, it was resolved that all petitions presented to this House against the bill before the meeting of the select committee on the bill be referred to such committee, and that such petitioners as prayed to be heard by counsel, agents, and witnesses against the bill be heard accordingly, and counsel heard in favour of the bill against the said petitions.

ELECTION PETITIONS ACT (1848) AMENDMENT.

On the motion of Sir C. O'Lochlen, leave was given to bring in a bill to amend the Election Petitions Act, 1848, in certain particulars.

ELECTION PETITIONS BILL.

The adjourned debate on Mr. Ayrton's amendment on going in committee on this bill, was resumed by

Sir F. Goldsmid, who contended that the bill, so far from discouraging *malâ fide* petitions, would have the effect of discouraging those which were *bonâ fide*. The bill was founded on principles unjust and self contradictory. All investigations before Parliament, for the benefit of private individuals, took place at the expense of private individuals, whilst those which were of a public character were defrayed at the public expense. The hon. member was proceeding to argue against the measure, when

An Hon. Member moved that the House be counted, and as only sixteen members were present, the House adjourned.

Wednesday, June 29.

POOR LAW (IRELAND) ACTS AMENDMENT BILL.

Mr. Hennessy moved the second reading of this bill.

After some debate, the House divided, when there appeared

For the second reading	24
Against	201

Majority against	177
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The bill was therefore lost.

TESTS ABOLITION (OXFORD) BILL.

The House went into committee of progress, and the clauses of the bill passed without comment.

Mr. Selwyn stated, that though the bill had not been opposed in committee, opposition would be offered on the third reading.

STREET MUSIC (METROPOLIS) BILL.

The House went into committee on this bill.

On the proposition to insert the words "On account of illness or interruption of ordinary occupation," in clause 1,

Mr. Ayrton opposed their introduction, and proposed, as an amendment, to leave out the words "near any house," and insert the words "in front of any house."

After a short discussion, the committee divided—

For the amendment	87
Against	201

Majority against amendment	114
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Mr. C. Bentinck proposed, in line 5, after "shillings" to insert "or at the discretion of the magistrate before whom he shall be convicted, may be imprisoned for any term not exceeding three days."

This was opposed by several members.

The committee divided—

For the insertion of the words	121
Against	111

Majority for the amendment	10
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Mr. Ayrton moved, as an amendment, that the last clause of the bill be omitted.

After some debate, the committee divided—

For the amendment	68
Against	151

Majority	83
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Sir G. Grey proposed the addition of the words "within view of such constable."

The committee divided—

For the proposal	83
Against it	118

Majority	35
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It being ten minutes to six when the numbers were announced, the House proceeded at once to the orders of the day.

WEIGHTS AND MEASURES (METRIC SYSTEM) BILL.

This bill was read a third time.

THAMES CONSERVANCY BILL.

This bill, as amended, was considered, and agreed to.

GAOLS BILL.

This bill passed through committee *pro formâ*.

SETTLED ESTATES ACT AMENDMENT BILL.

This bill was read a third time.

UNION ASSESSMENT COMMITTEE ACT AMENDMENT BILL.

The Lords' amendments in this bill were considered, and agreed to.

Parliamentary Reports and Papers.*Convention between Her Majesty and the King of Prussia, for the Mutual Surrender of Criminals.*

THE following Convention, signed at London the 5th March, 1864 (Ratifications exchanged at London the 11th April, 1864), has just been presented to both Houses of Parliament by command of her Majesty, 1864:—

Art. 1. It is agreed that the high contracting parties shall, on requisition made in their name through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused or convicted of any of the following crimes, namely—

1. Murder, comprehending the crimes of assassination, parricide, infanticide, and poisoning;
2. Attempt to commit murder;
3. Forgery, comprehending the counterfeiting of bank-notes, or public securities, or money;
4. Fraudulent bankruptcy;
5. Burglary (*Nächtlicher Einbruch und Eindringen in ein Wohnhaus oder dazu gehöriges Nebengebäude mit der Absicht ein Verbrechen zu begehen*);
6. Robbery with violence to the person robbed;
7. Larceny or embezzlement by clerks and servants (*Diebstahl oder Unterschlagung durch öffentliche oder Privat-Beamte, Geschäftsgesellschaften und Gesinde*);

committed within the jurisdiction of the requiring party, shall be found within the territories of the other, provided that such persons are not subjects of the party upon whom the requisition is made. Provided also, that in the case of a person accused, the surrender shall be made only when the commission of the crime shall be so established, as that the laws of the country where the fugitive or person so accused shall be found would justify his apprehension and commitment for trial, if the crime had been there committed; and that in the case of a person convicted, the surrender shall be made only on the production of an authenticated copy of his conviction, and on proof of his identity.

Consequently, on the part of the Prussian Government, the surrender shall be made only by the consent of the minister to whose department appertains the administration of justice, and after the production, in the case of a person accused, of a warrant of arrest or other equivalent judicial document, issued by a judge or other competent authority in the United Kingdom, clearly setting forth the acts for which the fugitive shall have rendered himself accountable; or, in the case of a person convicted, on the production of an authenticated copy of his conviction, and on proof of his identity.

On the part of the British Government, the surrender, in the case of a person accused, shall be made only on the warrant or other equivalent judicial document for the arrest of a fugitive, issued by a judge or magistrate duly authorised to take cognisance of the acts charged against the fugitive in Prussia, and on duly authenticated depositions or statements on oath before such judge or magistrate, clearly setting forth the said acts, or on such other evidence thereof as, according to the laws of England would warrant the apprehension of the said fugitive, and his committal

for trial for the said acts, if they had been therein committed; or, in the case of a person convicted, on the production of an authenticated copy of his conviction, and on proof of his identity.

Art. 2. The expenses of any detention and surrender made in virtue of the preceding article shall be borne and defrayed by the Government in whose name the requisition shall have been made.

Art. 3. The present Convention shall come into operation as soon as the necessary legislative acts shall have been passed. Either of the high contracting parties shall be at liberty to give notice to the other at any time for its termination; and in such case it shall altogether cease and determine at the expiration of six months from the date of such notice.

THE CASE OF MR. BEWICKE.

Report of the Select Committee.

THE report of the select committee appointed to consider the petition presented by Mr. William Bewicke, of Threepwood Hall, in the county of Northumberland, and to report its opinion as to whether he is entitled to any and what compensation, has been issued. The report is as follows:—

"Your committee, having inquired into the allegations of the petition, reports, that in its opinion Mr. Bewicke is not entitled to any compensation out of the public purse. Your committee is of opinion that, in order to lay any ground for a claim for such compensation, it was incumbent upon Mr. Bewicke to prove that there had been a miscarriage of justice in his case through the default of the persons charged with the administration of the law. And your committee, after careful inquiry, is satisfied that there was no such default. Your committee is unable to accede to the proposition, that persons who have been convicted in due course of law, by evidence subsequently proved to be false, are entitled to compensation out of the public purse; but even if your committee could have acceded to such proposition, there are circumstances in Mr. Bewicke's case that would, in the opinion of your committee, have taken it out of such general rule; Mr. Bewicke's own conduct, as admitted by himself, having, in the opinion of your committee, furnished material evidence in support of the accusation made against him, independently of other facts deposed to by witnesses of unimpeachable character. Inasmuch, however, as his goods and chattels at Threepwood Hall were, on his conviction of felony, forfeited to the Commissioners of Greenwich Hospital, and sold by them by auction before Mr. Bewicke obtained the Queen's pardon, your committee, in the special circumstances of the case, ventures to suggest, for the favourable consideration of the Crown, whether the full value of such goods and chattels at the time of the forfeiture should not be restored to him, minus the net produce of the sale by auction, already voluntarily paid over to Mr. Bewicke by the commissioners."

It appears from the report of the proceedings of the committee, that Mr. H. Berkeley proposed that 5000*l.* should be paid, and Lord John Manners had a similar proposition; but the draft report proposed by the chairman, Sir David Dundas, and Mr. Hunt was carried by a large majority; the only dissentients out of a committee of fifteen being Mr. Henry Berkeley, Lord John Manners, Mr. Liddell, and Mr. Baillie Cochrane.

Law Societies and Institutions.

UNITED LAW CLERKS' SOCIETY.—The thirty-second commemoration festival of this society was

celebrated at the Freemasons' Tavern, Great Queen-street, on Tuesday last; Mr. Justice Shee, in the chair, supported by the Hon. G. Denman, Q. C., M. P., T. W. Greene, Esq., Q. C., Mr. Serjt. Parry, Mr. Josiah Wilkinson, Messrs. W. Watson, C. J. Shebeare, J. Gray, Q. C., J. Ivimey, J. Bird (coroner), Mr. Secondary Potter, H. Dyte, W. Field, Q. C., Vernon Harcourt, W. H. Bagshawe, H. Lewis (of Ely-place), Serjt. Simon, H. Linklater, J. W. Snell, &c. 300 gentlemen sat down to dinner.

In proposing the toast of "The Army, Navy, and the Volunteers," the learned chairman, whilst expressing his hope that peace would be preserved, said, that if ever the time should come for striking a blow, that blow would be a hard and decided one. As to the volunteer movement, it had removed the gross slander that this was a mere nation of shopkeepers.

Mr. Josiah Wilkinson (who is colonel of a regiment of volunteers) returned thanks for the volunteers.

The secretary, Mr. Rogers, then read the annual report of the committee of management, from which we give the following extracts:—

"The United Law Clerks' Society was established in 1832 for the purpose of enabling the law clerks of the metropolis to make, by means of small monthly subscriptions, some certain provision for themselves and families in the events of sickness, permanent disability, old age, or death. A benevolent fund was also formed by means of a quarterly subscription from every member and the voluntary contributions of the Profession, and which fund was to be employed in assisting, with small gifts of money, deserving clerks, including non-members and their families, when suffering from temporary distress not brought on by misconduct, and for which contingencies the principal fund could not be used. The result has been, that the benefits have been largely increased in amount without any corresponding increase of subscription, and the members' contributions, which, in 1833 only amounted to 157*l.*, now exceed 1000*l.* a-year. The first benefit to which the members are entitled consists of an allowance in sickness, so long as a member is thereby entirely incapacitated from attending to his duties. The expenditure on this account is gradually increasing. In addition to the allowance in sickness, the society grants to its members, when permanently disabled from following their employment through old age, or any infirmity of body or mind, pensions or superannuation allowances, payable weekly, and varying from 26*l.* to 36*l.* 8*s.* per year. The amount paid to the superannuated members during the year has been 316*l.* 10*s.*, and the total amount paid to them 3436*l.* 19*s.* In addition to the benefits already mentioned, the family of each member is entitled on his decease to a sum of 50*l.*, and a member surviving his wife is on her death entitled to 25*l.* The preceding payments have all been made out of the principal or general benefit fund. There has been received during the year on account of this fund 345*l.* 12*s.* 6*d.* The capital is all invested with the National Debt Commissioners, and the reduced rate of interest allowed since 1850 will occasion considerable loss to the society, whose ability to meet the heavy obligations it is under to its members depends materially on the rate of interest it receives for its investments. The receipts of the benevolent or casual fund since the last anniversary have amounted to 571*l.* 11*s.* 9*d.*, and the expenditure, in gifts, loans, and necessary disbursements, to 459*l.* 0*s.* 8*d.* The balance added to the amount in hand at the close of the last year makes the present amount of this fund 570*l.* 3*s.* 1*d.* During the past year this society has afforded to law clerks and their families pecuniary aid to the amount of 1798*l.* 17*s.*, and since its institution in 1832, to the amount of 29,161*l.* 15*s.* 1*d.*"

The Chairman, in proposing the toast of the evening, expressed his satisfaction to find that from small beginnings this institution had, in the course of thirty years, progressed most favourably. It was most satisfactory to observe the amount of distress which had been relieved, and the encouragement which was given by the details contained in the report which had been read to all law clerks in this vast metropolis to become members. He was delighted to think, that next to the law clerks themselves, the chief supporters of the institution had been solicitors, barristers, and judges. The bench, indeed, had been amongst the earliest and earnest supporters of the society, for there was not one of the judges in the courts of law or equity who had not liberally contributed to its funds. When he was elevated to the bench, the law clerks, he had been told, would be a great trouble and annoyance to him, in all probability, but he had happily found the reverse to be the case; and he stated his conviction, that better conducted men he could not wish to meet with. Their general demeanour and conduct shewed they were justly entitled to a full share of that respect and consideration which were justly due to men holding such a laborious and responsible position. In the course of his eloquent address, the learned Chairman commented on various details of the report, and sat down amidst immense cheering.

The amount of donations and subscriptions announced reached 400l.

LAW AMENDMENT SOCIETY.—The National Association for the Promotion of Social Science, with which is united the Society for promoting the Amendment of the Law, will hold a special meeting at its offices, 3, Waterloo-place, Pall-mall, S. W., on Thursday, the 7th instant, when a paper will be read by Dr. Edward Smith, F.R.S., on "Jail dietary: the operations of the committee of the House of Lords, and of Sir George Grey's committee respecting it; and the present state of the question." The chair will be taken at eight o'clock.

Appointments.

The Lord Chancellor has appointed Mr. Owen Davies Tudor, of the equity Bar, a Registrar of the District Court of Bankruptcy at Birmingham, in the room of Mr. Charles Waterfield, who has retired on account of permanent infirmity.

The Lord Chancellor has appointed the following gentlemen to be Commissioners to administer oaths in the High Court of Chancery in England:—Edward Vaughan Radford, of Atherstone, Warwickshire; and Samuel S. Long, of Portsea, Hampshire.

The Judges of the Courts of Queen's Bench, Common Pleas, and Exchequer have appointed Mr. H. Berry, of 5, Verulam-buildings, Gray's-inn, to be a London Commissioner for administering oaths in common law in their respective courts.

The Queen has been pleased to appoint David Cowie, John D'Oyley, and Allan Lewis, Esqrs., to be members of the Executive Council of the Island of St. Vincent; and Archibald Patterson, Samuel Chipman, and John W. Ritchie, Esqrs., to be members of the Legislative Council of the Province of Nova Scotia. The Queen has also been pleased to appoint the Hon. John Henry Thomas Manners Sutton to be Governor and Commander-in-Chief in and over the Island of Trinidad and its dependencies.

A meeting of the Patent-law Commissioners was held on Monday, the 20th ult. at which the chairman,

Lord Stanley, Lord Overstone, Sir W. Erie, Sir W. Page Wood, H. Waddington, Esq., Sir Hugh Cairns, Q. C., W. R. Grove, Esq., Q. C., W. M. Hindmarch, Esq., Q. C., W. E. Forster, Esq., M. P., and W. Fairbairn, Esq., attended. The secretary, Mr. E. Lloyd, was also present.

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THE JURIST.

LONDON, JULY 9, 1864.

THE Report of the Committee on Law Reporting was published in full in one of our recent numbers (ante, p. 249), and we had hoped in this impression to notice its reception by the Profession. But the meeting of the Bar, which assembled at the Attorney-General's invitation, in Lincoln's Inn Hall, on the 1st instant, to consider this Report, discovered, after a very short discussion of the subject, that they were not yet sufficiently instructed to come to any conclusion; and accordingly the meeting was adjourned until some future day in November. As, however, in the mean while criticism, friendly or hostile, is courted by the committee, it will not be inopportune for us at once to record our views of this production, on which it is evident that, at any rate, pains and labour have been bestowed. It may be objected, that as our own existence will be imperilled by the success of the projected scheme, our criticisms are not likely to be very impartial. To remove any such impression from the mind of any casual reader, we must trust to the matter and quality of our remarks, and their inherent justness; but we may also observe, that we do not see much reason to fear the competition of the new series of reports advocated by the committee. And, in fact, we very much doubt the success of their scheme; for the financial portion, which ought to be the strongest, seems to us the weakest, part of the structure. Clause 21 admits, that "it is considered essential for carrying out the scheme, that the aggregate amount of subscriptions shall reach 10,000*l.* at the least," and as the whole series is priced at 5*l.* 5*s.* per annum, whilst the common law and equity series are separately priced at 3*l.* 3*s.* per annum, it follows that 2000 subscribers, or (as it is more probable that the lower-priced series would be preferred) 3000 subscribers, will have to be found before the new scheme can be even launched, or (as Mr. Amphlett remarked) before any publisher will look at it. The expectation of any aid, even by way of advance, from the Consolidated or Suits' Fund, is utterly chimerical and baseless, and subscribers to the new reports must be sought amongst the patrons of the numerous reports already in existence. To secure these, therefore, the new system ought to possess some very striking and superior advantages over the old; and we will, therefore, consider the new one a little more closely, to see if we can discover them. The defects of the present system are admitted on all hands. The authorised reports (as they are improperly, though usually, called) are expensive, irregular, and considerably in arrear; whilst the other reports are often indiscriminating, and sometimes hurried and incorrect: and moreover, unfortunate practitioners are obliged to peruse all, whether authorised or unauthorised, to the equal detriment of their purse and patience. Under the new system a council (incorporated by statute or charter) is to be appointed by the Lord Chancellor, the Inns of Court, and the Incorporated Law Society; and this council is to have a paid secre-

tary; and the expenses of the council and secretary, not exceeding 500*l.* a year, are to be guaranteed, not defrayed, by the Inns of Court. The council are to appoint editors and reporters, at salaries fixed by the Report, subject, however, to variation at the discretion of the council; and the appointments of the reporters are to be subject to the approval of the presiding judge in the court in which he is to report. The council are to have a general control over the reports, and over their mode, and time and price, and method of publication; but the editors are to supervise the reports, though their only defined duty is to select cases for reporting, upon the principle of rejecting all cases useless as precedents.

The particular duties of the editors and reporters are to be prescribed by the council, but no restriction is to be laid on their right to practise. The common-law and equity reports are to be published monthly, and the appellate reports when practicable; but the council are to have power, if they shall find it desirable, to establish in connexion with the permanent reports, a weekly set of reports besides. The existing reports are treated of only incidentally. It seems to be assumed that the present reporters of the authorised reports will be only too happy to take office under the new régime, or if these gentlemen should not prove sufficiently alive to the advantages of being thus absorbed, the places are to be offered to the reporters of any publication which may be discontinued in consequence of the issue of the reports recommended by the committee. Moreover, the committee are to have power to make such arrangements as will lead to the discontinuance of any set of existing reports, and for discharging the consideration for the same, by payments during a limited period out of profits. And judges and the profession generally are to be requested to give (seemingly) exclusive facilities to the compilers of new series.

The charges on profits are to be, first, the expenses of publication, sale, and distribution, including the commission to the publishers, and the first moiety of the salaries of the editors and reporters; secondly, the payment to the Inns of Court of the salary of the secretary and the other expenses of the council; thirdly, the payment of the second moiety of the above salaries, and the consideration (if any) for the discontinuance of any existing reports; fourthly, the augmentation of the salaries of the editors and reporters, and the constitution of a reserve fund. And the council are to contract with one or more publishers or printers, who shall undertake all the trouble and risk of the publication, sale, and distribution of the reports, receive the subscriptions, pay all expenses, and account to the council quarterly.

Now, the only novelty we can find in this scheme is this "imperium in imperio" of the "council." This body shadows forth the directorate, as the subscribers do the proprietary of a joint-stock company; but the resemblance is very faint and obscure, and in the nature of a "dissolving view." For the council are not only to be unpaid for all their time and trouble, but in their contracts they will have to pledge their own personal credit; and as far as we can see, this is their only

use. The editorial part of the system is no novelty, for all the unauthorised series of reports are presided over by editors; whilst, amongst the authorised reporters, the principle of selection of cases for reporting, and in cases of joint reporting, a virtual headship of one of them, have always obtained. Cheapness of price is of course no inducement, unless all rivals are to be driven from the field. No greater guarantee for the correctness and regularity of the reports is given by the new scheme than already can be had under existing arrangements; in fact there will be less security for these essential points. At present both the fame and profit of the existing series depend on the character of the reports; whilst the editors and reporters of the new series will only be responsible to that anomalous body, the unpaid and (if they do their duty) over-worked council.

Upon the whole, we believe, that unless the existing reports are discontinued, it is impossible for the new reports to succeed; and here it is, in our opinion, that this committee have made a great mistake. If they had boldly proposed a joint-stock company to buy up the existing reports, we are not sure that its success would not have been great, and its advent hailed as a boon by the public as by the Profession, though even then it would have eventuated in a monopoly. But the committee, by some confusion of ideas, seem to have considered that, with the absorption of the existing reporters, the disappearance of the reports, with which their names are at present allied, would also follow, and that the publishers would submit without a murmur to the loss of a lucrative income. At any rate, their Report is open to this construction, for the hypothesis, that any publisher would be content to look for the payment of the purchase money of any series to the profits of the new series, is simply ridiculous; whilst, when all the existing reports are bought up, we shall be much surprised if any publisher be persuaded, even with a subscription list of 10,000*l.*, to undertake a contract wherein the payment of salaries only will require 11,200*l.* At the Bar meeting, Mr. Amphlett cautiously announced, that subscriptions to the extent of 10,000*l.* would be required before a publisher would entertain the question, but he did not say that he had found any to take the contract under those circumstances. As, however, it was requested that names of subscribers might be sent in before November, some test of the feasibility of the scheme in the minds of the Profession will be thereby afforded. It clearly is not to the taste of the present reporters; for at the meeting they complained that, if they gave in their adhesion, as contemplated, the result would be, that their discretion would be fettered, their responsibility frittered away, and their salaries diminished.

Finally, we would remark, that this Report has not obtained the concurrence of all the members of the committee, and that, of what may be called members in extensive practice, the numbers of assentients and dissentients are about equal; and, moreover, that it is vastly dissimilar from, and greatly inferior to, the plan propounded by Mr. Daniel, the promoter of the whole movement, which will be found in 9 Jur., N. S., part 2, p. 204, which, while it took a much more comprehensive view of the whole subject, did not ignore vested interests.

This Report has not, either, found favour in the eyes of the public—not, at least, if we may judge from the public prints. The alternatives, however, that they suggest are impracticable, if not impossible. The judges have not the time to write their judgments, even if they had the capacity or the inclination. One Vice-Chancellor is known, despite the rebuke of a Lord Chancellor, never to write a judg-

ment; whilst at least one Lord Justice and one Baron of the Exchequer would find much difficulty in making the reasons for their decisions apparent to the ordinary legal or lay understanding. Nor is it at all certain that it would be desirable to allow the Bench in all cases to revise their judgments before publication, although this is much more commonly the case at present than is generally known. It may easily be imagined by some, and it is well known to others, that although "hard cases make bad law" is a maxim which the Courts always profess to have in their memories, yet their real decisions are constantly, and consciously, and unconsciously, swayed and biassed by the circumstances of the case, and travel accordingly to the very verge of the law, if not beyond it; and the practice of revision would not tend to diminish this weakness—amiable as it may be.

We have not space, however, to examine here all the remedies that might have been applied to the diseased system of law reporting; but if, in pursuance of an useful suggestion at the meeting, all those who have nostrums to propose should send them to the committee before November, there may ensue therefrom some emendation of the Report which may make it more acceptable to those for whom it is designed.

EXEMPTION FROM INCOME TAX BY WILL

THE effect of a testamentary gift of an annuity clear of deductions, was considered in some recent cases, with results which are not easily reconcilable. In *Festing v. Taylor* (3 B. & S. 217, 235) the question arose upon a devise, by the late Duke of Somerset, of certain hereditaments, to the use that the Duchess should receive a yearly rent-charge of 2200*l.*, to be charged upon, and issuing out of, the said hereditaments, and to be paid to her half-yearly, "without any deduction or abatement whatsoever on account of any taxes, charges, impositions, or assessments already, or to be thereafter taxed, charged, assessed, or imposed on the said hereditaments, or on the said rent-charge, or on the said duchess or her assigns in respect thereof, by authority of Parliament, or otherwise howsoever." The question was raised upon a case stated for the opinion of the Court, between the Duchess, claiming right to distrain for and recover the amount of the deductions which had been made for income tax on payment of the rent-charge, and the tenant of part of the lands charged, insisting that the annuity had been fully paid; and the stat. 5 & 6 Vict. c. 35, s. 60, Sched. (A.), No. iv, rule 10, allowing the landlord, owner, or proprietor of any hereditaments subject to a rent-charge, to deduct out of the rent-charge the amount of the income tax thereon; and the 73rd section of the statute, annulling all contracts, covenants, and agreements against the deductions and repayments provided for by the act; and the 16 & 17 Vict. c. 34, s. 40, extending the provisions in the former act for deduction of income tax to every person liable to the payment of any rent, interest of money, annuity, or other annual payment, either as a charge on property or as a personal debt or obligation by virtue of any contract, were cited. It was admitted, that in the case of a rent-charge created by an instrument inter vivos, a stipulation against the deduction of the income tax would be void, as was decided in *Tinckler v. Prentice* (4 Taunt. 549) and *The Attorney-General v. Shield* (3 H. & Norm. 834); and the Court of Queen's Bench considered, that though the prohibition in the acts did not extend to a will, the will gave a rent-charge of 2200*l.* only, from which the deduction of income tax for the benefit of the landowner was imperative under the acts, and not a rent-

charge of variable amount, namely, 2200*l.* plus the amount of income tax for the time being payable. This decision was reversed in the Exchequer Chamber, by Erie, C. J., Pollock, C. B., Williams and Byles, J.J., and Martin and Channell, BB., on the ground that the testator's intention was to give the full amount of the rent-charge free of income tax, and that there was nothing in the acts to prohibit such a gift. The result of the decision is, that a gift of a rent-charge free of income tax is a gift of a rent-charge equal to the specified annual sum, together with the amount of the income tax on the entire rent-charge (i. e. on the clear sum, and on the income tax payable). This amount the testator is considered to have charged on the tenant, and there is nothing to prevent his doing so. On the other hand, the tenant, pursuant to the express directions in the acts, deducts and retains the tax on the gross rent-charge, and pays the net balance to the devisee. This operation is consistent with the terms of the enactment, and with the intention of the testator. (See 5 & 6 Vict. c. 35, s. 102).

In *Festing v. Taylor*, the deductions from which the rent-charge was to be free were referred to in very comprehensive terms, but the income tax was not specified. It had already been decided that a testamentary devise of hereditaments to trustees, in trust to pay an annuity, "free from income or property tax, or any other deduction," entitled the annuitant to payment free from that deduction, although Sir W. P. Wood, V. C., said—"This Court always holds that income tax is not a deduction." (*Turner v. Mulhacur*, 1 Johns. & H. 334). In *Wall v. Wall* (15 Sim. 513), an annuity given by will, "clear of all taxes and deductions," was held by Sir L. Shadwell, V. C., to be liable to deduction for income tax. "I have looked," he said, "at the 102nd section of the Property Tax Act, and it is quite plain, from the language of that section, that the thing that is given is the thing that is to pay the tax." But the question was as to the amount of the thing given. In *Lethbridge v. Thurlow* (15 Beav. 334), also, an annuity given by will, "clear of legacy duty, and every other deduction whatsoever," was held subject to deduction for income tax. One of the reasons given for the decision is remarkable:—"Income tax is not properly a deduction out of the estate or legacy, but a charge which the Legislature has fixed on the person himself." The other is still more remarkable:—"Besides, it would be a strong thing to say, that if a testator bequeathed a house, free from every deduction, it would throw the assessed taxes on his general personal estate."

In *Abadam v. Abadam* (10 Jur., N. S., part 1, p. 505), the Master of the Rolls held, that an annuity, directed by a testator to be paid out of his personal estate, "without any deduction whatever," was subject to deduction for income tax. *Festing v. Taylor* was cited, and his Honor admitted, that the only question was as to the testator's intention; and in this case he considered that the testator had not pointed to the income tax, because that is not properly a deduction, but a charge on the income of the beneficiary. This is not very consistent with the Vice-Chancellor of England's remark, that "the thing that is given is the thing that is to pay the tax."

What, then, does the testator mean when he speaks of deduction? It is settled that his meaning includes deduction for legacy duty. (*Barksdale v. Gilliat*, 1 Swanst. 562). And when we have got so far as to include one tax in his meaning, it is not easy to see on what ground any other tax can be excluded. Indeed, deductions for taxes seem to be the only deductions to which a legacy or annuity given simpliciter can be liable.

We have, then, authority for these distinctions:—

An annuity given by will, to be paid without deduction, is to be paid without deduction for legacy duty, but not without deduction for income tax.

An amount given by will to be paid "clear of all taxes and deductions," is not to be paid clear of income tax, notwithstanding the word "taxes" in the plural.

A rent-charge given by will to be paid without deduction for any taxes, charges, impositions, or assessments on the hereditaments charged on the rent, or on the devisee of the rent in respect thereof, is to be paid without deduction for income tax.

Now, as both the legacy duty and the income tax are, in the case of an annuity given by will, to be deducted by the person who pays the annuity (36 Geo. 3, c. 52, ss. 6, 24, 25, 27; 5 & 6 Vict. c. 35, s. 102; 16 & 17 Vict. c. 34, s. 40), and as the income tax, in the case of a rent-charge, is not charged on the devisee of the rent, and is charged on the hereditaments out of which it issues, we are unable to see the reason for these distinctions.

All difficulty would have been avoided if the plain meaning of the testator's words had been followed, and the annuitant had been allowed in every case where he was to receive his annuity clear of deductions, to demand payment from the person bound to pay, without any deduction by that person. What the annuitant himself pays to the tax gatherer is not a deduction on payment of the annuity; what is kept back on payment of the annuity is a deduction; and when a testator directs, that after making all deductions, the annuitant shall receive a certain clear sum, we conceive that the Court of Chancery has no authority or excuse for saying that he did not mean all deductions.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—1. In the review of my work on conveyancing which appeared in your last number, the writer accuses me, in somewhat strong terms, of using inaccurate language when speaking of conditions of entry. The passage which he quotes (from p. 13) would no doubt be incorrect if it referred to conditions of entry, but it is sufficient to observe that it does not refer to them, but to the right of entry incident to a reservation of services, as a less careless reading of the context would have shewn.

2. In the subsequent paragraph he considers that I have grievously erred in supposing the case of *Stones v. Rowton* to have decided that the 23 & 24 Vict. c. 145, s. 27, does not apply to the case of all the trustees retiring simultaneously. Now, Mr. Morgan (in the part of his work referred to in the note to the close of the passage extracted by your reviewer—Morg. Chan. Acts, p. 318, note), says, "This section does not provide . . . nor for the case of all the trustees retiring simultaneously (*Stones v. Rowton*, 17 Beav. 308);" and I am disposed to think with Mr. Morgan, when he seems to consider that the above case is virtually a decision upon the statutory power. Nor does your reviewer make it plain that the addition of the words "the last retiring trustee," in the statutory power, constitutes any substantial difference in its favour, even if the 13 & 14 Vict. c. 21, s. 4, can be taken in aid to extend the power to last retiring trustees; whilst it is questionable whether (the distinction between "trustee" and "trustees," in the plural, being maintained throughout the power) the above act would be at all applicable. At any rate, if I err, I sin in good company.

3. Again: your reviewer, when speaking of the proviso for reconveyance, given in prec. 13 of my work, seems to say that I have not given reasons for the

greater part of the omissions he points out. After a careful examination, I assert that I have given, in my remarks on that proviso, reasons more or less satisfactory for all but one of those omissions (see pp. 278-281, 262); and that one omission I deemed accounted for by my remarks at a previous page (see pp. 83 and 261). Your reviewer also notices what he deems unnecessary or wrong words and clauses in the proviso, but he *omits* to notice that I have attempted to assign reasons for the employment of some of them; as to some others, my fault seems to be, that I have not carried out my criminal abbreviations of the common forms still more ruthlessly.

4. The critic is also particularly severe upon a new form of mortgage which I have dared to suggest. I shall not attempt to justify in detail its provisions, for that would be to repeat those observations in my book, the existence of which he entirely ignores; but I will only state, what he forgets to mention, that the precedent is *professedly* given merely to challenge attention to the possibility of an improvement upon the forms of mortgage now in use.

I shall not ask you, Sir, to allow me to examine at any greater length the criticisms of your reviewer. If I have, in his opinion, made mistakes, perhaps he will admit that it is possible to err in that way without being guilty of "rash carelessness" or wilful obliviousness. At least, I will venture to suggest, that a gentleman who, after nearly eighteen month's incubation, has been unable to frame an indictment for carelessness without a flaw in it, may perchance have improperly condemned portions of my work, which a closer scrutiny would have shewn were not open to his adverse criticism.

As to "that logical and systematic arrangement and development of the subject . . . which is common to the Principia and the most elementary school-book!" I have merely to say, that it was because I did not find such arrangement, &c. in most books on *conveyancing*, that I wrote my work.

5. I would only entreat your reviewer to believe, that the "collection of Mr. Davidson, ably edited by Messrs. Wright and Whaley," which he seems to have taken under his protection, was not in my contemplation at all when I penned my Preface; though we are informed, on his authority, of the worth of the said "collection," and of its adaptation to "the habits and wishes of the Profession at large." I presume, from his remarks, that the said "collection" avoids the "Alpine region of the law;" and, therefore, I the more exceedingly regret, that through my "faults of style," I should have failed to render that region accessible to him.

I feel sure that your habitual fairness will induce you to admit these remarks to your columns, though the length of the review has necessarily lengthened my reply.

I beg to remain, Sir,

Yours, obediently,

HUBERT LEWIS.

WE are only concerned to shew that we have not wilfully misrepresented Mr. Lewis, and to do our best to make amends to him if we have done so inadvertently. We have affixed corresponding numbers to those paragraphs of his letter which seem to call for reply, and to our replies.

1. The passage at p. 13 is part of a sub-division, headed "*conditions*," in an introductory chapter "of the clauses of a conveyance," the next preceding sub-division being "*the reddendum*," and the next following "*the covenants*." The sub-division is too long for transcription, but the following is a complete sum-

mary of its contents:—The conditions which follow the reddendum qualify the tenure of the land, and may secure the performance of anything the parties choose, and be for the benefit of a third person. The remedy is by the entry of the grantor, and his heirs or assigns of the reversion (if any), but the entry cannot be reserved or given to a stranger. No services can be reserved on a grant of a fee, and no condition can be imposed in fee. After this, the article on conditions in a deed proceeds and concludes in these words:—"We must add, that the entry for non-render of rent and other services, though originally it was in right of a forfeiture caused by such non-render, is now only allowed for the purpose of distraining the goods and chattels to be found on the land, and not for the purpose of permanently resuming the possession of the land." We repeat, that this refers to conditions of re-entry.

2. The passage at p. 244 is—"It has been held that the act does not apply to the case of all the trustees retiring simultaneously. (*Stones v. Rowton*, 17 Beav. 808)." In *Stones v. Rowton* (decided in 1853) the power was given to "the surviving or continuing trustees or trustee, or the executors or administrators of the last acting trustee." In the act (passed in 1860) the power is "for the surviving or continuing trustees or trustee for the time being, or the acting executors or administrators of the last surviving or continuing trustee, or for the last retiring trustee." We repeat, that the construction of the act, stated by Mr. Lewis to have been decided in *Stones v. Rowton*, has not been decided, and is still a matter of doubt.

3. If statements unsupported by authority are reasons, we admit that Mr. Lewis has given reasons for the greater part of the omissions in question. The passages are too long for quotation; we can only take as a specimen the commencement of the first reference (p. 278):—"The heir of the covenantee will take an interest under the covenant, as it is to make an estate to descend to the heir (ante, p. 63), and so can pay the money and perform the condition without being named in it." We turn to p. 63, and find the proposition—that "the heir, too, will be entitled to the benefit of such collateral covenants as secure a future conveyance of land to the covenantee, F. N. B. 145 (C.); *Wotton v. Cooke*, Dy. 337, b.; *Jones v. King*, 4 Mau. & S. 191; *Burt. Comp. s. 530*—[a misprint for 580]; *Pres. Shep. Touch. 170-176, though not named*, at least, if the conveyance is to be of an estate of inheritance. (*Kingdom v. Nottle*, 1 Mau. & S.; *Burt. Comp. s. 580*)." Burton merely cites F. N. B. 145. Here is not a word about the performance of a condition precedent; and in every one of the authorities referred to it is expressly stated that the heirs were named.

4. We cited the commencement of Mr. Lewis's fourteen pages of Observations on his New Form of Mortgage, and we now give the concluding words:—"The author, however, submits, that the suggestion of the great authority referred to [Mr. Jarman] may, either in the way he has attempted or otherwise, be at this day safely and advantageously revived and adopted."

5. What shall be said of the discretion of a writer who has not looked into Davidson's Conveyancing, and yet states his reason for bringing a new book into the world to be, that "the many volumes of precedents in conveyancing already published," are not suited for the use of students?

TO THE EDITOR OF "THE JURIST."

SIR,—No one who was present at the recent meeting of the Bar could fail to perceive that the feeling of the majority of those assembled was decidedly

averse to any such alteration in the mode of reporting judicial decisions as that proposed by the committee. If any one doubted this, his doubts must have been removed by the alacrity with which the meeting responded to the proposal of an almost indefinite adjournment—alacrity so eager that all idea of thanking the committee for the time wasted in their well-meant blunder, or even of according the usual decent compliment to the chairman, was forgotten.

Now, therefore, that the schemes of Mr. Daniel and his supporters are at an end, I would suggest, through your columns, to those engaged on the irregular reports, that they will improve the publications to which their services are given, and ward off attacks in the future, if they exhibit greater independence in their selection of cases to be reported, and employ their energy, not in reporting everything, but in reporting every good thing well. It too often happens that a case is reported simply from a fear that some other publication will report it; and the evil is increased by that other publication reporting it because the first has done so. If gentlemen would rely on their own judgment in the matter, I am convinced they would better satisfy both themselves and the public, and increase the value and circulation of their reports.

I am, Sir, your very obedient servant,
R. E. T. B.

Lincoln's-inn, July 2.

LEGALITY OF SECURITY FOR COMPOUND INTEREST.

TO THE EDITOR OF "THE JURIST."

SIR.—On the 28th March, 1863, you were good enough to insert a letter from me, appending an editorial remark decidedly in favour of the legality of reserving compound interest.

In the last edition of Smith's Manual of Equity (1864), at p. 284, is the following passage, conflicting with the opinion expressed in *The Jurist* of the 28th March, 1863:—

"A mortgagee cannot in the instance stipulate, that if the interest be not paid at the time it shall be converted into principal."

Mr. Lindley's Introduction to the Study of Jurisprudence, note (r) to sect 177, in the Appendix, p. xcix, there is a "query" on the point, since the repeal of the usury laws.

Perhaps you may think this question worth further consideration.

Your obedient servant,
W. S.

July 2, 1864.

[We have not Mr. Smith's Manual of Equity at hand for reference, and if the statement referred to is, like most of the statements in that compilation (at least in the first edition), unaccompanied by reasons, we must presume that it has slipped into or retained its place by inadvertence. We believe that no doubt exists in the Profession as to the validity of a stipulation for compound interest. It is true that the rule against securities for compound interest was not a necessary consequence of the statutory prohibition of usury, and that Lord Eldon, in referring to the rule, admitted that there was "nothing unfair, or perhaps illegal, in taking a covenant originally, that if interest is not paid at the end of the year, it shall be converted into principal." But the reason why the Court of Chancery would not permit that was, at the same time, stated by his Lordship to be, that it "tended to usury, though it was not usury." (*Chambers v. Goldwin*, 9 Vea. 271). Now that the Legislature has made it legal to stipulate for interest at any

rate, it is impossible to object to a contract on the ground of its tending to usury. In *Forbes v. Potter* (26 L. J., Ch., 468), a mortgage for 1000*l.*, and interest at 5*l.* per cent., was upheld, although the sum actually advanced was only 700*l.*, in accordance with the deliberate agreement of the parties. The objection, that by means of a security for compound interest, a debtor may be oppressed under pretence of indulgence, is not likely to be listened to at the present day; the Court would reserve the exercise of its remedial powers for cases in which actual fraud or oppression might be proved.—ED.]

LAW REPORTING.

At a general meeting of the Bar, convened and presided over by the Attorney-General, and held in Lincoln's Inn Hall, on Friday, the 1st July, the committee appointed on the 2nd December, 1863, "to propose a plan for the amendment of the present system of reporting, editing, and publishing reports of judicial decisions, and to report thereon to a future meeting of the Bar," presented their Report, signed by fifteen members of the committee. The remaining seven members, namely, the Solicitor-General, Montagu E. Smith, the Hon. George Denman, George Mellish, Joshua Williams, George Sweet, and Henry Matthews, for various reasons, declined to sign the Report. Mr. Amphlett, the chairman of the committee, Sir Hugh Cairns, and Messrs. E. James, W. M. Best, E. A. Miller, H. Manisty, C. Wordsworth, and R. Malins addressed the meeting. The decision of the Bar on the scheme proposed was postponed until November.

Law Societies and Institutions.

THE National Association for the Promotion of Social Science will hold its eighth annual meeting in the city of York, from the 22nd to the 29th September, under the presidency of Lord Brougham. His Grace the Archbishop of York is one of the vice-presidents, and also the president of the education department. The Right Hon. Sir James P. Wilde, judge of the Court of Probate, presides over the department of jurisprudence. The other chairs have not yet been filled up. The council of the association have found it necessary, owing to the annual pressure of business, to adopt new regulations. In each of the departments, now reduced to four, three special questions are put, and a day is to be devoted to the discussion of each, the voluntary papers being read and discussed on the remaining days. The following are the questions for the several departments:—

Special Questions for Discussion in Jurisprudence.

1. Are the laws of real property in the three parts of the United Kingdom respectively, in their substance and tendency, suited to the present condition of society? and if not, how should they be improved?
2. On what principle should the law deal with questions of responsibility and mental competence in civil and criminal cases respectively?
3. Whether any, and what, ameliorations can be introduced into the institution and conduct of criminal prosecutions?

Special Questions for Discussion in Education.

1. What improvements can be introduced into the present system of public school education?

The discussion will be opened by a paper on the Report of the Commissioners appointed to inquire into the Revenues and Management of certain Colleges and Schools.

2. In what way can the grammar and other endowed schools be made more available for the education of the middle class?

3. What are the peculiar difficulties in the way of elementary education in small towns and rural districts? and how can those difficulties be removed or lessened?

Special Questions for Discussion in Health.

1. What are the best means for disposing of the sewage of towns?

2. What are the causes, and what are the means for the prevention, of excessive infant mortality?

3. What is the influence on health of the overcrowding of dwelling-houses and workshops? and by what means could such overcrowding be prevented?

Special Questions for Discussion in Economy and Trade.

1. What are the effects upon trade of the existing laws of maritime warfare?

2. Is the granting of patents for inventions conducive to the interests of trade?

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THE JURIST.

LONDON, JULY 16, 1864.

THE heavy arrears of causes entered for trial at Guildhall, in the Courts of Queen's Bench and Common Pleas, have for some time past created remark and complaints on the part of the suitors and the legal Profession. At the sittings which are now expiring, the list of remanets in either court will not be nearly exhausted, and the result is that, in all probability, a cause entered at any given time will not be tried within twelve months from the time of entry. As to the complaints of the Profession, it may be said that they are not to be regarded; and that, as long as the suitors are not inconvenienced, the fact that these arrears occasion a great loss of business and profits to the Bar and to attorneys is a matter of no moment. However this may be, the public, at all events, have a well-grounded right to complain of the delay, for it is wearisome work for a plaintiff to wait so long till his right to the money or damages which he is claiming is ascertained, and it is equally wearisome work to the defendant to have a liability which he disputes hanging over his head for so many months; the only way of avoiding this protracted anxiety being an unsatisfactory compromise, to which, for the sake of peace of mind, the parties are often compelled.

This complaint of delay is not merely occasional; it increases gradually, and, therefore, it is a complaint which deserves and requires attention. It is not creditable to a great country, and especially to a country whose trade, and commerce, and wealth are so enormous as those of Great Britain are, that the decision of law suits should be so long delayed. The majority of the special jury causes tried at Guildhall (to which class of causes our remarks particularly apply) are mercantile causes, in the progress of which up to the point at which they are ready for trial, much time has often elapsed in consequence of the necessity for sending commissions to foreign parts to examine witnesses. It is, therefore, a great hardship, that further delay should be caused by the inability to bring them on for trial when they are ripe for it.

It may be said, that such a state of things is inevitable, and that with the present judicial staff more work cannot be got through with. We quite agree with the remark, and think that the judges are already overworked, and have far too many and too varied duties cast upon them; and the remark points clearly to the remedy, namely, to increase the number of judges, and to have continuous *Nisi Prius* sittings. If a judge were added to each court, this change might be effected, and the more especially, when the law courts are all united under one roof, of which sooner or later there appears to be a prospect. If a judge of each court sat at *Nisi Prius* continuously, both in and after term, the increasing list of causes could be mastered; and it is to be remembered, that as the commerce and population of the country increase, the list of causes will increase in the same proportion, and that if the evil is now serious, it must become more and

more so, unless the remedy which we suggest, or some other remedy, be adopted. The expense of increasing the judicial power would be but trifling when compared with the income of the country, and with the sums which are spent in a less satisfactory manner. If Lord Westbury were to turn his attention to the subject, we think he might be more successful than he has hitherto been in his legal measures.

While upon the subject of increasing the number of judges, it will not be inopportune to notice the complaints which are so rife of the unsatisfactory state of the Court of Exchequer Chamber. It is quite possible, and it has in fact more than once occurred, that seven judges form the court of error, that four are of opinion the judgment appealed from should be reversed, three that it should be affirmed, and that the Court below were unanimous in their judgment. The result is, that the opinion of four judges prevails over the opinion of seven.

We confess, at present, we do not see how this state of things is to be remedied; but there is another cause of complaint which, perhaps, an increase in the judicial staff would remedy, namely, that in consequence of their numerous other duties, the judges sitting in error have not time maturely to consider their judgments. No one acquainted with the judges will dream of imputing to them a desire to shrink from their duties, but judges are but men, and feel fatigue and heated courts and heavy responsibilities as much as other men do.

We do not think that a single member of the Profession would deny that the two subjects to which we have alluded, the heavy arrears of the causes and the state of the Court of Exchequer Chamber, are matters of complaint, and if justly matters of complaint, are serious evils. It is well, therefore, to ventilate them, with a view to invite attention, and the suggestion of remedies. It is not becoming that the condition of our courts, and the business of those courts, should be in an unsatisfactory state; either the complaint should be shewn to be groundless, or should be remedied.

While we are upon the subject of the increase of the judicial staff, we will refer to a kindred subject, that of judicial arbitrators. We have more than once discussed it in the pages of *THE JURIST*, and we think it is a matter which deserves to be well considered. The legal disputes now settled by arbitration daily increase in number, and we believe it to be no exaggeration to say, that the matters which are so decided far exceed in importance, and in the amount of the money involved, those which are settled at *Nisi Prius*. But here, also, the delay is a constant subject of complaint; the difficulty in making appointments which will suit the counsel and the parties is so great, and the feeling that arbitration appointments are to be postponed to court business so strong, that an arbitration upon a case of any importance is sometimes a matter of years. An arbitrator is naturally unwilling to make peremptory appointments; he may himself be counsel in other arbitrations, and so feels the force of the maxim, "*Veniam petimusque damusque vicissim.*" However natural this may be, still the parties

have a right to complain. If there were judicial arbitrators who sat from day to day, and before whom attendance was as compulsory as it is before a judge at Nisi Prius, the result might be, that counsel would be compelled to incur some loss, or that a regular arbitration bar would be formed; but the result would certainly be, that the suitors would have their cases much more speedily settled, and thus a public benefit would be attained. Here, again, there would be a slight increase of expense in the judicial establishment. The arbitrators so appointed would not, of course, receive the same amount of salary which the judges receive; a moiety of it would be sufficient; and surely the amount of such salaries, and the additional expense of any officers who would be attached to the arbitrators, is not to be weighed against the benefit which such an institution would produce. We have thus discharged our minds of the thoughts which a consideration of the present state of business in the courts has produced. We venture to submit them to our readers, in the hope that they may create further discussion.

JUDGMENTS, &c. LAW AMENDMENT BILL.

THIS important Bill was read a second time, in the House of Lords, on Friday, the 15th inst.

Whereas it is desirable to assimilate the law affecting freehold, copyhold, and leasehold estates to that affecting purely personal estates in respect of future judgments, statutes, and recognisances: therefore, be it enacted &c., as follows:—

Sect. 1. No judgment, statute, or recognisance to be entered up after the passing of this act shall affect any land (of whatever tenure) until such land shall have been actually delivered in execution, by virtue of a writ of elegit or other lawful authority, in pursuance of such judgment, statute, or recognisance.

2. In the construction of this act, the term "judgment" shall be taken to include registered decrees, orders of courts of equity and bankruptcy, and other orders having the operation of a judgment; and the term "land" shall be taken to include all hereditaments, corporeal or incorporeal, or any interest therein; and the term "debtor" shall be taken to include husbands of married women, assignees of bankrupts, committees of lunatics, and the heirs or devisees of deceased persons.

3. Every writ or other process of execution of any such judgment, statute, or recognisance, by virtue whereof any land shall have been actually delivered in execution, shall be registered in the manner provided by an act passed in the 23 & 24 Vict. [c. 38], intitled "An Act to further amend the Law of Property;" and no other or prior registration of such judgment, statute, or recognisance shall be or be deemed necessary for any purpose; and no reference to any such prior registration shall be required to be made in or by the memorandum or minute of such writ or other process of execution, which shall be left with the senior Master of the Court of Common Pleas for the purpose of such registry.

4. Every creditor to whom any land of his debtor shall have been actually delivered in execution, by virtue of any such judgment, statute, or recognisance, and whose writ or other process of execution shall be duly registered, shall be entitled forthwith, or at any time

afterwards while the registry of such writ or process shall continue in force, to obtain from the Court of Chancery, upon petition in a summary way, an order for the sale of his debtor's interest in such land; and every such petition may be served upon the debtor only; and thereupon the Court shall direct all such inquiries to be made as to the nature and particulars of the debtor's interest in such land, and his title thereto, as shall appear to be necessary or proper; and in making such inquiries, and generally in carrying into effect such order for sale, the practice of the said Court, with respect to sales of reale states of deceased persons for the payment of debts, shall be adopted and followed, so far as the same may be found conveniently applicable.

5. If it shall appear, on making such inquiries, that any other debt due on any judgment, statute, or recognisance, is a charge on such land, the creditor entitled to the benefit of such charge (whether prior or subsequent to the charge of the petitioner) shall be served with notice of the said order for sale, and shall after such service be bound thereby, and shall be at liberty to attend the proceedings under the same, and to have the benefit thereof; and the proceeds of such sale shall be distributed among the persons who may be found entitled thereto, according to their respective priorities.

6. Every person claiming any interest in such land through or under the debtor, by any means subsequent to the delivery of such land in execution as aforesaid, shall be bound by every such order for sale, and by all the proceedings consequent thereon.

7. This act shall not extend to Ireland.

LAW REPORTING.

I THINK it is due to the Bar that I should state my reasons for not concurring in the Report of the Committee on Law Reporting, of which I was nominated a member. The joint proposal of Mr. Serjeant Puling, Mr. Westlake, and myself, mentioned in the Report, does not in every particular represent my views. I agreed to some alterations for the purpose of securing the co-operation of those gentlemen.

It appears to me that the essence of all that is practicable, by way of amendment of the present system of Law Reporting, is comprised in the three following propositions:—

1. That all judgments of the superior courts should, as far as practicable, be written.
2. That all judgments of the superior courts, not committed to writing before delivery, should be committed to writing under the authority of the Court as soon as possible after delivery.
3. That access to all the judgments of the superior courts should be afforded to every member of the Profession as speedily and cheaply as possible.

I moved resolutions to this effect before the committee, but the first being negatived, I withdrew the others.

The judgments of the courts make the law. This alone is a sufficient reason why their preservation should not be left, as at present, to the care of any reporter who may chance to be present.

Accuracy is evidently the first requisite. To secure this, the best means should be adopted. Writing evidently secures accuracy better than speaking. But if a judgment must needs be spoken, a report of it, made by a practised short-hand writer, and perused and

signed by the judge, appears to me to be the next best means of securing accuracy.

Speedy and cheap access to the judgments, when once they are accurately recorded, is evidently best obtained by their being printed as soon as possible, and published at the lowest price that will cover the expense of their publication.

Reporting as now used is a complex operation. It comprises an accurate statement of the judgment so far as the reporter's means and opportunities may allow; but it includes also selecting, digesting, and abstracting, so as to present in a readable form the decisions of such cases as the reporter thinks worthy of publication.

The great mass of materials is an evil that can never be overcome. No one can prevent two persons from going to law about any matter whatever; and, if they do, a decision more or less valuable must be the result.

I think that the present reporters exercise functions which ought to be separated. So far as they aim merely at an accurate report of the judgment, their functions appear to me to be such as would be more properly discharged by an official person. So far as they select, digest, and abstract, so far, I think, should their duties be open to competition. The records which form the sources of history are all officially preserved; but history itself is written by individuals, whose success is proportioned to the ability they display in selecting and digesting.

The scheme recommended by the committee proposes to unite functions which, I think, should be kept separate. The proposed incorporation of a new body by letters-patent or act of Parliament appears to me to involve a constitutional change far too important for the evils complained of. But my main objection is, that it does not strike at the root of the evil, which lies in the want of an accurate official record of every judgment pronounced by the Courts.

JOSHUA WILLIAMS.

3, Stone-buildings, Lincoln's-inn,
6th July, 1864.

TURNPIKE TRUSTS.

THE select committee upon turnpike trusts have made the following Report, which has been published with the evidence (Parl. Paper 383), and on which we hope to see the Legislature take some steps in the next session. We hope that very few ratepayers will be so blind to their own interests as not to see the advantages of the proposed abolition. The committee do not appear to refer to the additional fact, that the roads in England, instead of being, as formerly, the best in Europe, are now far inferior to those in France and in Switzerland:—

Your committee have considered the Report of 1836, which was referred to them. They have received much valuable information from Colonel Penant and Mr. Wrightson as to the course pursued since that period, from which it appears that the whole bonded debt on turnpike trusts in England and Wales, which in 1836 exceed 7,000,000*l.*, has now been reduced to little more than 4,000,000*l.* There are, however, large arrears of interest, which, although in process of reduction since 1836, mainly by disallowance, still amounted in 1860 to 760,000*l.*

They have also considered the Report of the Commissioners of Roads for Scotland, where in several

counties the system has been greatly improved by the appointment of road boards, who, by the consolidation of various trusts, or by the assessment of the counties for the repair and maintenance of the roads, and by the appointment of a competent surveyor for each county, have effected a material diminution of expense, which will lead to a speedy extinction of the existing debt, and a reduction both in number and amount of tolls.

In Ireland the removal of the tollgates has been effected by charging the repairs of the roads and the existing debt upon the rates of the counties and baronies; the roads having been submitted to the supervision of the county surveyors.

In South Wales, where some years ago great dissatisfaction prevailed in consequence of the frequency and apparently unjust distribution of tollgates, owing to the excessive number of trusts, great improvement has been effected by an act of Parliament which consolidated the trusts, regulated the number of tollgates, and provided for the extinction of debt by the advance of a sum of money out of the Consolidated Fund, to be repaid by terminable annuities of thirty years.

Your committee fully concur in the conclusion arrived at by the committee of 1836, "that the abolition of tolls throughout the kingdom would be beneficial to the community;" and they think that the anticipations of that committee, as to the probable effect of railways, have been to a great extent realised; the traffic being now chiefly local, and the tolls being generally paid by the ratepayers.

In the words of Mr. Wrightson, "The through traffic has been diverted by railroads; the roads have become a local burthen, and the trustees have been driven to the multiplication of bars."

Wherever the ratepayers are the principal tollpayers, the inference would appear to be inevitable, that it would be better they should contribute to a rate, which would be administered under their own supervision or that of their representatives, than continue subject to tolls.

Tolls appear to your committee to be unequal in pressure, costly in collection, inconvenient to the public, and injurious, as causing a serious impediment to intercourse and traffic.

Mr. Wrightson estimates the cost of each gate at 25*l.*, and he thinks there are at least four gates in each trust, which is probably too low an estimate; but as the number of trusts exceeds 1100, the cost of collection, even on this estimate, would be very large.

Mr. Macefield states, that in the Leominster trusts it takes one-half of the revenue to pay the expenses and establishment charges, while the repairs are put upon the parishes. Mr. Wrightson adds, that the cost of renewals is enormous. Were the system as productive and as satisfactory as it is in many instances notoriously the reverse, the existence of a double set of officers in one district would still, in the opinion of the committee, be unnecessary and extravagant.

Cases are not rare of trusts in which the whole produce of the tolls, after payment of the establishment charges, is absorbed in the payment of the interest of the debt, while arrears accumulate, and the whole burthen of the maintenance of the roads is thrown upon the parishes.

This parochial burthen, contemplated by the existing law, and of inevitable incidence whenever tollgates are removed, will, in the opinion of your committee, press unequally and unjustly on many small, poor, or peculiarly situated parishes, and they, therefore, recommend the adoption of a more extended area of rating.

Your committee are far from saying that there may

not be some districts in the north of England, or elsewhere, in which the abolition of tolls, under the existing state of the law, would be unsatisfactory; but they think such cases are exceptional, and that tolls should not therefore be continued generally over the whole country.

From the annual returns, as well as from the evidence of Mr. Leslie, it would seem that the bonded debt of England and North Wales may now be taken at a nominal sum but little exceeding 4,000,000*l*. In the opinion of Colonel Pennant and of Mr. Wrightson, the current value of the debt is about 3,000,000*l*., which sum might be liquidated by an annual payment of, say 180,000*l*., for twenty-five years.

On the whole, your committee are of opinion, that the abolition of turnpike trusts, as now existing, would be both beneficial and expedient, and might be practicable if the system adopted in Scotland or in South Wales could be acted upon in each county in England and North Wales.

Your committee are of opinion, that pending the abolition of the present system, attention might with advantage be directed to the circumstances of the several trusts whose acts are continued from year to year by the Annual Continuance Act; and if it should be found that the power of Parliament might be beneficially exercised, in order to provide for the more speedy extinction of the debt of any trust; to secure a full consideration of the propriety of abolishing trusts that are free from debt (now amounting to more than 100), or to obtain economy of management by the consolidation of several trusts; your committee suggest that such trusts should be excluded from the operation of the Continuance Act, and be obliged to come to Parliament for a renewal of their acts.

Imperial Parliament.

HOUSE OF LORDS.—Tuesday, July 12.

The second reading of the Judgments Law Amendment Bill was postponed until Friday.

The Life Annuities and Assurances Bill was read a third time, and passed.

HOUSE OF COMMONS.—Monday, July 11.

The Attorney-General for Ireland said, he hoped to introduce the bill on the subject of the transfer of land in Ireland either on Monday or Tuesday next week. It was his intention to withdraw the Irish Chancery Bill, and to introduce it next session.

The Stamp Duties Bill was read a third time.

The Criminal Justice Extension Bill was read a second time.

Wednesday, July 13.

INSOLVENT DEBTORS BILL.

The House went into committee on this bill.

The Attorney-General appealed to the member for St. Ives not to proceed with this bill at present. The Lord Chancellor was not satisfied with the system of commitments by county court judges, and intended to frame a new measure on the subject, which would not be open to the objections against the bill which he had introduced into the House of Lords, and which would include this subject.

Mr. Horsfall, Mr. J. A. Turner, Mr. Beecroft, and Mr. Clay said that they had been requested by their constituents to oppose the bill.

Mr. Malins and Mr. Ayrton were in favour of the bill.

Mr. Paull withdrew the bill for this session.

PETTY OFFENCES LAW AMENDMENT BILL.

This bill was introduced by Mr. Whalley, and provided that "in all cases where any

person shall be charged with any offence punishable by summary conviction before justices of the peace or a magistrate, the person so charged, and his wife or her husband, as the case may be, shall be competent to give evidence on the hearing of such charge."

The Solicitor-General objected to this bill, as altering a fundamental rule in the law of evidence. If the prisoner gave evidence, he must also be cross-examined. He took several objections to other provisions in the bill.

Mr. Whalley said, that as the general feeling of the House was against the bill he would not divide.

The bill was, consequently, lost.

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1558	5000	1157	1857	45
6	5000	1693	1857	44
941	2500	771	1858	68
646	5000	1742	1858	54
13	5000	2091	1859	61
831	5000	1433	1860	37
870	4000	1438	1860	50
643	3000	1149	1860	57
2871	5000	907	1861	36
2907	5000	1180	1862	36
1751	1000	318	1862	48
309	5000	1899	1862	40

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NOTICE.

The Office of THE JURIST is removed to No. 39, BELL YARD, TEMPLE BAR, W. C., where all communications for the Editor are requested to be addressed.

Orders for Advertisements, and Letters on business matters, to be addressed to the Publisher as above.

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THE JURIST.

LONDON, JULY 23, 1864.

As several members of the Bar have been, to a certain extent, led away by the idea of having all judgments delivered in writing, and printed at the public expense, and as such a scheme is obviously likely to find favour with reporters, we will venture to point out wherein its utter impracticability lies, as we conceive. Three of the reporting committee proposed this scheme, and one of them, Mr. Joshua Williams, has again recommended it in a letter to the Bar, which was printed in *THE JURIST* last week. The joint scheme proposes that the registrar shall "record the names of the parties, and their counsel and attorneys or solicitors, the authorities cited, the judicial opinion or opinions delivered, and the formal judgment, order, or decree; also the substance of the pleadings, and the case and the points relied upon by counsel"—in plain English, shall make a report of the case, with the exception, apparently, of the customary head-note or summary. Each registrar is to be "assisted by one or more short-hand writers, whose duty it should be to take down all remarks of the judges, especially their judgments, &c." At present not one-half of the cases which come before the Courts are worth reporting, and consequently are not reported; but the registrars would be compelled to report every case, and this would, at a moderate computation, give constant work to three competent men and a short-hand writer in each court, besides the present registrars, who are already fully employed. Now, can any one seriously believe that the Government would ever be induced, or ought to be recommended, to undertake so enormous, and to a great part useless, expense?

Some considerations of this kind have probably struck Mr. Joshua Williams, for he more moderately proposes merely that all judgments of the superior courts should be either written or committed to writing as soon as possible, and then printed; and he says—"The judgments of the courts make the law," and speaks of "the want of an accurate official record of every judgment pronounced by the Court." We cannot help suspecting that he has unwittingly been misled by the word "judgment." The judgment properly speaking, is what is termed in Chancery the decree or order, of which there is already an "accurate official record;" what the Chancery Bar improperly term the "judgment," is, in fact, the reasons on which the decree is founded; and though it would certainly be convenient for reporters, there is no absolute necessity to have an official record of those reasons. To have them all given in writing, though that plan has many advantages, would require a great and inconvenient addition to the judicial strength; and even then, such is the infirmity of human nature, that the judgments would probably fall much in arrear. As to having the judgment taken down by a short-hand writer always in court, that plan, where a formal judgment is pronounced, might succeed, though it would be a great and often useless ex-

pense; but in a vast number of cases the judgment is pronounced piecemeal, and would be utterly unintelligible without the rest of the dialogue between the court and the counsel.

In both schemes it is proposed that all this mass of matter shall be printed—an idea which would never enter into the head of any one who has had any experience in reporting, and has a practical knowledge of the vast quantity of judicial dicta which are omitted or curtailed by the reporters. As we before observed, the official reporter would have no discretion, and must publish the whole matter in every case, filling two or three huge blue books every year, at an enormous expense, and cumbering posterity with tons of printed paper, not one-fifth of which would ever be referred to again, or be of the smallest use to any human being. And when all this expense is incurred, what evil would be remedied? The judgment or decree is officially recorded at present, and the reasons are taken down by the reporters, so well and so accurately, that out of the hundreds of cases reported annually, there are not a dozen in which the judge is incorrectly reported, the inaccuracies of which complaint is sometimes made, being far more frequently found in the statement or in the head-note. Moreover, no human institution is perfect; and even under the proposed system errors would occasionally occur.

We have not space to demonstrate the impracticability of several other schemes for reporting which have lately been propounded by amateur reporters.

Correspondence.

LAW REPORTING.

TO THE EDITOR OF "THE JURIST."

SIR,—Unless judgments were themselves reports of all the important facts of every case, I confess I do not see how the plan proposed by Mr. Joshua Williams would work; for a compiler of such registered judgments would probably find therein a very loose statement of facts, or no statement at all, and although he might certainly be said to have the rudder, he would as certainly be without the ship. How, for instance, would such a compiler meet the difficulty of a judgment of the following description:—"Upon consideration of all the facts and documents in evidence in this case, and not omitting to attribute due value to the indenture of the — day of —, I am of opinion that the defendants are entitled to our judgment. Neither before nor after the — day of —, had the defendants any notice," &c.—a style which a learned Lord Justice much affects, laudably, I think, for the sake of brevity?—Now, it is undesirable, for manifest reasons, that a judge should be his own reporter; the two characters ought to be kept distinct, and independent of each other; each, in fact, ought to be a check on the other, and the conjoint result ought to be, indisputability. One of the existing evils of reporting is, the repetition, in a thousand forms, of law that has been admitted as such for centuries; but if all judgments are to be printed and published as soon as possible, at the lowest possible price, a great many of such judgments, I fear, will not be worth the smallest coin in her Majesty's currency. Mr. Joshua Williams writes, "No one can prevent two persons from going to law about any matter whatever; and

if they do, a decision, more or less valuable, must be the result." The foregoing sentence enunciates the principle on which, I regret to say, reporting is at present conducted; but I think, on the contrary, that it ought to be conducted on the principle of some decisions being of value, and others not. That which is new in principle, in law or equity, or new in its application of principle to facts—that which involves the new construction of statute law, or the rules of procedure of courts of justice, ought to be reported. But it may be said, that there is very little of decision that can accurately be termed "new;" and that the history of the majority of cases is only of attempts to bring them within authorities already decided; and this is true, to a great extent; and, consequently, whilst the reporter must report everything that concerns the construction of new statutes, and new rules of procedure, he is left to himself with regard to old statutes, old rules, and the well-established and long-recognised principles of law and equity. Nothing can be more difficult than the task of the reporter; yet the present mode of reporting seems to assume, that if the number of reporters be increased their efficiency is secured. The proposition, however, that I wish to lay down is, *that the facts of the case determine whether it deserves report*; and, if so, that it would be more reasonable to print and publish those facts only, with "judgment for the plaintiff," or "judgment for the defendant," subjoined, than to print and publish judgments which, necessarily imperfect and referential in statement, would become a fruitful source of all kinds of conjecture as to the facts in evidence.

As to the plan proposed by two-thirds of the Committee on Law Reporting, it is eminently unpractical, but, even if it did work, not one existing evil would be remedied. The guarantees which the proposed council (albeit, a corporate body!) so nervously require, shew incontestably how little is their confidence in the pecuniary prospects of their scheme. Reporting, in my opinion, is of such importance to the public, that it ought not to be a matter of private enterprise in the hands of any individual or body corporate whatever. The Bar must have reports, and ought to have them, at as cheap a rate as possible, in the interest and on behalf of the public generally. The reporter ought in every court to be an important public functionary, and to be appointed and paid by the Government, and for the purpose of citation as authority, his reports ought alone to be admissible. This would render the purchase of the official reports a necessity; but while one barrister has this, and another that series of reports, there will, of course, be no profit anywhere, nor will the high ability which is indispensable to the satisfactory performance of the duties of reporter, be secured. Constant presence in court, which is most essential, would be insured by a system of official reporting, and if a judicious selection from the staff of regular and irregular reporters were made for the new offices, and their auxiliaries, the difficult question of compensation might be surmounted, and the profits of the official reports might, for a few years, be appropriated to that end, instead of being applied in reduction of the price.

This scheme may or may not be considered impracticable, but I am convinced that, if it could be accomplished by the action of the Lord Chancellor in the Legislature, it would be a greater boon to the Profession and the public generally, than any remedial statute which his Lordship has yet introduced.

Your obedient servant,

G. L.

Rolls Chambers, Chancery-lane,
July 18, 1864.

Imperial Parliament.

HOUSE OF LORDS.—Thursday, July 14.

The following bill has received the royal assent—Settled Estates Amendment.

Friday, July 15.

The Judgments Law Amendment Bill was read a second time, and referred to a select committee.

The Inland Revenue (Stamp Duties) Bill was read a second time.

Monday, July 18.

The Inland Revenue (Stamp Duties) Bill was read a third time, and passed.

Tuesday, July 19.

The Accidents Compensation Act Amendment Bill, to be read on Friday.

HOUSE OF COMMONS.—Thursday, July 14.

A petition by the Society of Lincoln's Inn, against the Courts of Justice Bill, was presented, and subsequently the bill was withdrawn.

Wednesday, July 20.

APPEAL IN CRIMINAL CASES AMENDMENT BILL.

Sir F. Kelly said, that it was with great regret he felt compelled to abandon this bill for the present session. There was a proposition lying at the root of this all-important question, and worthy of the consideration of those who were opposed to the bill; and that proposition was, that every man in the country had a right to demand of the Government under which he lived, that before he should be deprived, by the irresistible power of the State, of his life or liberty, all practical means, at least, should be exhausted to ascertain whether he was guilty or innocent of the crime with which he was charged. So long as there was no effectual appeal in criminal cases, that right was virtually denied to the subjects of this country. An intolerable evil also arose out of the system which had grown up in the office of the Secretary of State for the Home Department. Under the name of the exercise of the prerogative of mercy, the office of the Home Secretary had become, of late years, merely and simply a court of criminal appeal, without any of the qualities and powers which belonged to a court of justice. The result was, that the greatest possible dissatisfaction with the decisions of the Home Office in these matters had been excited, for no one could tell whether those decisions had been correctly arrived at. Various accidental circumstances had from time to time prevented his proceeding with the present bill, and he had been disappointed in mitigating the serious opposition which existed to it in certain quarters. Though he believed that he had the authority of the greater number of the judges in Westminster Hall in favour of the measure, yet he feared that the Government were opposed to it, and consequently he felt that at that period of the session it would be a waste of public time were he to enter at large into the question. He moved, therefore, that the order of the day for the second reading of the bill should be discharged, giving notice at the same time, that, at the commencement of next session, he would submit to the consideration of the House a similar measure.

The Solicitor-General observed, that, had the discussion come on, he would have been prepared to shew that there were grave objections to the bill, and that the measure could not be adopted without great inconvenience.

The order of the day for the second reading was then discharged, and the bill withdrawn.

PRIVATE BILL COSTS BILL.

Mr. Scourfield moved the second reading of this bill.

Mr. Roebuck said, the bill involved very important considerations, and ought to have been brought forward at an earlier period of the session.

Mr. Massey said, the question involved in the bill had been considered by various select committees, without any decision having been arrived at, and, in the present state of the House, he did not think it advisable to proceed with the measure.

Mr. Scourfield then withdrew the bill, and the order for the second reading was discharged.

This bill will be found printed ante, p. 293.

Parliamentary Reports and Papers.

THE following bill is not likely to pass into a law during this session, but as it will no doubt be introduced next year, we print it for the consideration of the Profession:—

A Bill for awarding Costs in certain Cases to Opponents and Promoters of Private Bills.

"Whereas it is expedient to award compensation or costs to parties who have been subjected to expense by the promotion of speculative and unsound railway schemes in the House of Commons, and to promoters of schemes bona fide proposed for the public advantage, in cases where the opposition to such schemes has been groundless and vexatious: be it enacted &c., as follows:—

"Sect. 1. When the committee on a railway bill are unanimous in their decision that the preamble is not proved, and further unanimously report that the proposed scheme was either unnecessary and unsuitable, the opponents shall be entitled to recover their costs of the opposition out of the deposit, such costs to be taxed by the taxing officer of the House as hereinafter mentioned.

"2. When the opposition has been unanimously declared by the committee to be unfounded and vexatious, then and in every such case the promoters shall in like manner be entitled to recover the costs of their opposition from the parties so opposing."

The bill then proceeds to make provision for the taxation and recovery of the costs.

STAMP DUTIES ACT (1864) AMENDMENT.

THIS act, which has just passed, is intended to amend the act, cap. 18, of this session; and sect. 1 provides, that "No letter or power of attorney made for the sale, transfer, or acceptance of any of the Government or parliamentary stocks or funds, and duly stamped in that behalf, shall be chargeable with any further or other stamp duty by reason of its containing therein any authority for the receipt of dividends on any such stocks or funds." And sect. 2, "That no letter or other writing under hand only containing any request or direction to any joint-stock or other company or society, or to any secretary, treasurer, or other officer thereof, or to any banker, by the owner or proprietor of any stocks, funds, or shares of or in any such company or society, to pay the dividends or interest arising from any such stocks, funds, or shares to any person named in such order, request, or direction, shall be chargeable with stamp duty as a letter or power of attorney."

BANKRUPTCY.

FROM a return from the registrar in bankruptcy, recently furnished to the House of Commons, it appears, that in no instance since 1861 have the creditors' assignees been required to give security, or charged with 20% per cent. interest, under the 175th section of the act of 1861; and that in only one instance has loss been incurred by the failure of the solicitor to the creditors' assignees.

GENERAL EXAMINATION.—MICHAELMAS TERM, 1884.

THE Council of Legal Education have approved of the following rules for the public examination of the students.

The attention of the students is requested to the following rules of the Inns of Court:—

"As an inducement to students to propose themselves for such examination, studentships and exhibitions shall be founded of fifty guineas per annum each; and twenty-five guineas per annum each respectively, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each general examination; and one such exhibition shall be conferred on the student who obtains the second position; and further, the examiners shall select and certify the names of three other students who shall have passed the next best examinations; and the Inns of Court to which such students as aforesaid belong, may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students previously to their being called to the Bar. Provided that the examiners shall not be obliged to confer or grant any studentship, exhibition, or certificate, unless they shall be of opinion that the examination of the students has been such as entitles them thereto."

"At every call to the Bar those students who have passed a general examination, and either obtained a studentship, an exhibition at such examination, or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day."

RULES FOR THE PUBLIC EXAMINATION OF CANDIDATES FOR HONOURS, OR CERTIFICATES ENTITLING STUDENTS TO BE CALLED TO THE BAR.

An examination will be held in next Michaelmas Term, to which a student of any of the Inns of Court, who is desirous of becoming a candidate for a studentship, an exhibition, or honours, or of obtaining a certificate of fitness for being called to the Bar, will be admissible.

Each student proposing to submit himself for examination will be required to enter his name at the treasurer's office of the Inn of Court to which he belongs on or before Saturday, the 22nd day of October next; and he will further be required to state in writing whether his object in offering himself for examination is to compete for a studentship or other honourable distinction, or whether he is merely desirous of obtaining a certificate preliminary to a call to the Bar.

The examination will commence on Saturday, the 29th day of October next, and will be continued on the Monday and Tuesday following.

It will take place in the Hall of Lincoln's Inn; and the doors will be closed ten minutes after the time appointed for the commencement of the examination.

The examination by printed questions will be conducted in the following order:—

Saturday morning, the 29th October, at half-past nine, on Constitutional Law and Legal History; in the afternoon, at half-past one, on Equity.

Monday morning, the 31st October, at half-past nine, on Common Law; in the afternoon, at half-past one, on the Law of Real Property, &c.

Tuesday morning, the 1st November, at half-past nine, on Jurisprudence and the Civil Law; in the afternoon, at half-past one, a paper will be given to the students including questions bearing upon all the foregoing subjects of examination.

The oral examination will be conducted in the same order, during the same hours, and on the same subjects, as those already marked out for the examination by printed questions, except that on Tuesday afternoon there will be no oral examination.

The oral examination of each student will be conducted apart from the other students; and the character of that examination will vary, according as the

student is a candidate for honours or a studentship, or desires simply to obtain a certificate.

The oral examination and printed questions will be founded on the books below mentioned, regard being had, however, to the particular object with a view to which the student presents himself for examination.

In determining the question whether a student has passed the examination in such a manner as to entitle him to be called to the Bar, the examiners will principally have regard to the general knowledge of law and jurisprudence which he has displayed.

A student may present himself at any number of examinations until he shall have obtained a certificate.

Any student who shall obtain a certificate may present himself a second time for examination as a candidate for the studentship or exhibition, but only at the general examination immediately succeeding that at which he shall have obtained such certificate; provided, that if any student so presenting himself shall not succeed in obtaining the studentship or exhibition, his name shall not appear in the list.

Students who have kept more than eleven terms shall not be admitted to an examination for the studentship or the exhibition.

The READER ON CONSTITUTIONAL LAW and LEGAL HISTORY will expect the candidates for honours to be well acquainted with the origin and progress of our Laws and Constitution, as explained in chap. 8, part 3, of Hallam's History of the Middle Ages.

He will expect them to be well acquainted with the reign of Richard II, and with the chapters in Hallam's Constitutional History which give an account of the reigns from the accession of Henry VII to the death of Anne; with the State Trials of persons eminent in our history, or otherwise important, from the accession of James I to the year 1760; with the History of the Law of Treason and the Law of Libel.

All candidates will be required to know the principal events in English History from the Conquest to the year 1782; to have an accurate knowledge of the reigns of the Stuart Kings, of the Trials of Sidney, Russell, College, and Bushel, and Mrs. Gaunt; and to be well acquainted with the provisions of Magna Charta, the Bill of Rights, the Act of Settlement, and the Toleration Act.

The READER ON EQUITY proposes to examine in the following books:—

1. Haynes's Outlines of Equity; Smith's Manual of Equity Jurisprudence; Hunter's Elementary View of the Proceedings in a Suit in Equity, part 1.

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3. Void and voidable Deeds and Contracts.—*Joshiah Wm. Smith on Real and Personal Property*, 2nd ed., c. 6, pp. 759-802.

4. The Common Forms of Mortgages.—2 Davidson's Conveyancing, pp. 497-1088, 2nd ed.

5. Real Assets.—*Joshua Williams on Real Assets*, published by Sweet, 1861.

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4. The Law of Homicide and of Simple Larceny, as stated in Archbold's Crim. Con. Plead. (15th ed.), book 2, part 1., c. 1, s. 1 (so far as applicable), c. 2, ss. 1 and 2.

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5. The under-mentioned cases (Smith's Leading Cases, vol. 1), with the notes thereto:—*Armory v. Delamirie*; *Ashby v. White*; *Chandelor v. Lopus*; *Coggs v. Bernard*; *Collins v. Blantern*; and *Lampleigh v. Brathwaite*.

6. Smith's Mercantile Law (last ed.), book 1.—"Of Mercantile persons," omitting c. 3.

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July 13, 1864.

WILLIAM NEWLAND WELSBY.

[Chiefly from *The Chester Courant*.]

THIS well-known and much-esteemed member of the bar was born in the village of Acton, near Nantwich, in Cheshire, in the year 1803. His father was land agent to Lord Crewe, Lord Cottenham, the Rev. James Tomkinson, of Dorfold, and other proprietors in that part of Cheshire, and he also took out a certificate as a conveyancer. His mother was a Miss Newland, of Farnham, in Surrey, and he was their only child. His education was very carefully attended to by his parents, and he early shewed a remarkable quickness and aptitude for learning. He was first sent to the grammar-school at Acton, which then had for its master the Rev. Mr. Davenport, and from thence he was removed to a private school of some note, kept by Dr. Doncaster, at Oakham, in Rutlandshire. At the usual age he matriculated at St. John's College, Cambridge, and took his degree as 23rd Senior Optime in 1823. He then entered at the Middle Temple, and was called to the bar in November, 1826, having already attracted the notice of Mr. Justice Bayley, who had the highest opinion of his abilities. He joined the Chester Circuit, then under the old system, and had for his contemporaries the late Sir John Jervis, Mr. John Horatio Lloyd, the late Mr. Trafford, Mr. Townsend, Q. C., Mr. Cottingham (afterwards Recorder), and other able men. Mr. Welsby's abilities and learning soon obtained recognition. After a few years' regular attendance upon the circuit he got into good junior business, and during the time that Sir John Jervis was Attorney-General he was appointed by him to the responsible and lucrative post of junior counsel to the Government, the duties of which office he was peculiarly qualified to fulfil, from his accurate knowledge of Crown law, and the experience he had then acquired. In July, 1841, he was appointed Recorder of Chester. His practice continued to increase, and he gradually rose to the undisputed leadership of his circuit, where for many years he was engaged in every important case, besides having a considerable practice in London. The amount of work he accomplished was extraordinary; for, besides the calls upon his time by his ordinary practice, he provided assiduously for the wants of his profession by his pen. He seemed to have a peculiar talent for re-arranging and improving old text books, and adapting them to existing wants; and also for illustrating and clearing up the perplexities in any new enactment.

Among the numerous legal works of which he was either the author or editor, we may mention, "Archbold's Criminal Pleading," "The Municipal Corporation Acts," "The Highway Acts," "The Law of Sheriff," and "Chitty's Statutes," all of which are universally used by the profession. Besides this, he was for some years one of the regular reporters in the Exchequer; and in 1846 he published the "Lives of Eminent English Judges." These multifarious labours, however, have suddenly been brought to an unexpected close. Devoted to his profession and fond of the practice of it, he was apt to miscalculate his own powers of endurance. Able, apparently, without any feeling of weariness, to keep his attention almost incessantly on the stretch, he did not sufficiently husband his strength, and the strain upon his powers proved at last too great. After passing through a long life without knowing scarcely what sickness meant, he was seized, in the course of last month, with an attack of illness, so sudden and so severe, as justly to cause the gravest alarm to his friends. By the help of his strong constitution, he

rallied for a time, when one of his first acts was to resign the recordership of Chester, as he shrank from doing any portion of his proper work by deputy. He soon, however, experienced a relapse; and, indeed, there were few hopes of any effectual recovery from the first, as he was found to be suffering from a complication of internal diseases, the liver and the heart in particular being seriously affected. The pain he endured was at times excruciating; but his sufferings were alleviated by the ministrations of his wife and of his attached and faithful clerk. A few days ago it was apparent that his end was approaching. He received the sacrament at the hands of the clergyman of his parish, and sent down his last farewell to some inquiring friends. On Friday morning, at about eleven o'clock, he sank into a state of insensibility, from which he never recovered, and he breathed his last at nine o'clock that evening. "Poor dear Welsby," writes one of his oldest friends, "those who knew him best will appreciate his memory most. Great acuteness of intellect, considerable learning, and, what is worth much more than these, great kindness of heart, combined to render him no ordinary man. Struggling under many disadvantages, he acquired and held a position which he filled with honour to himself and benefit to his profession." To his extreme kindness of heart, those who have known him longest will bear unanimous testimony. He was also in all his dealings an eminently upright man. As leader of his circuit, he had it often in his power to advance or retard the fortune of its members, but he always exercised his influence according to what was right. He never allowed any personal likes or dislikes to sway his judgment, or move him to depart from the rules he had laid down for his guidance. Thus, notwithstanding a certain roughness of manner, and indifference to the general opinion of the world, which at times caused him to be misunderstood, his loss will be mourned with a genuine sorrow by the large number of those by whom he was familiarly known, while to the older and more intimate of his friends and associates his death has caused a void which can never be filled up. He was married, but never had any family.

Legal News of the Week.

CHANCERY.

It is rumoured that, under the direction of the Lord Chancellor, some new Orders will shortly be issued, which will remove the hearing of unopposed petitions from the courts. This will be the heaviest blow which the Junior Chancery Bar has ever sustained; and though the present system of fees upon unopposed petitions cannot be defended on its own merits, it is clear, that if a large number of educated men are to bestow their time and talents for the benefit of the suitors in Chancery, a considerable increase must be made in the fees paid upon hostile briefs. At present the fees received for the easy business compensate for the labour bestowed on the difficult business; but if there is to be nothing earned easily, the profession will scarcely be worth following for merely that which is earned for hostile business on the present scale.

WE understand that the changes proposed in the Accountant-General's Office have not met with general concurrence, and are not likely to be immediately carried into effect.

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N O T I C E.

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THE JURIST.

LONDON, JULY 30, 1864.

THE letter addressed by Mr. Joshua Williams to the Bar (which was inserted ante, p. 284), is written by a gentleman who has evidently thought much upon the subject of law reporting, and whose thoughts and suggestions deserve consideration. Mr. Williams puts forth three propositions as the groundwork of amendment in the present system of reporting:—

1. That all judgments of the superior courts should, as far as practicable, be written.
2. That all judgments of the superior courts not committed to writing before delivery should be committed to writing, under the authority of the Court, as soon as possible after delivery.
3. That access to all the judgments of the superior courts should be afforded to every member of the Profession as speedily and cheaply as possible.

The second proposition appears to comprehend the first, and the two together to amount to a proposition, "that all judgments of the superior courts are, before or after delivery, to be reduced to writing, but that, as far as is practicable, they should be reduced to writing before delivery"—i. e. by the judges themselves.

Now, a very little consideration of the different classes of cases which come before the superior courts will lead to the conclusion, that it would be almost absurd to reduce to writing the judgments upon a large proportion of them. In very many cases, the decision is a matter of course, in very many the point, or rather the pretended point, is too clear for argument; no principle of law is involved in it, or the principle which applies is already so clearly established and so conclusively applicable, that it would be useless to record the case. The present reporters make no mention of at least one-half of the business of the courts for one or other of these reasons, because, in fact, to use a common expression, "there is nothing in them to report." If, then, we are to interpret Mr. Williams's propositions literally, they would burden the records of the court with a quantity of useless matter, and impose a great amount of needless labour on the individual whose lot it might be to record the decisions of the judges. If, on the other hand, Mr. Williams does not intend that every decision on every matter, great or small, that is to come before the courts, is to be reported, and limits his propositions to decisions of importance, who is to select? Does he intend the judges, in addition to their present duties, to wade through the mass of trifling matters which occupy a great portion of their time, and of which it would be utterly useless to preserve a record? or in what other way does he propose to limit the labours of the judges or of the officer who is to record their proceedings? We collect from his letter that he intends the reporters to exercise the function of selection; that they are to sift the large mass of decisions which the judges, or the officer appointed for that purpose, have reduced to writing, and extract from it such cases as they think deserving of being reported; and that the su-

periority of one report over another would depend upon the judgment exercised in the selection of cases.

Now, in the first place, the judges themselves must be important agents in carrying out this scheme; and it will certainly be as well to ask some of their Lordships to become members of the committee, or at all events to give the benefit of their suggestions and experience before a measure is resolved upon which proposes to cast upon them fresh duties and responsibilities; which duties and responsibilities, moreover, it will be perfectly optional with them to undertake, unless they are compelled to do so by an act of Parliament. Mr. Williams proposes that they should themselves reduce to writing, or should superintend and revise the reduction by others to writing, of all the judgments which they deliver, and, if we understand him rightly, they must do this with all possible speed, in order that the judgments may be published as speedily as possible.

Mr. Williams's propositions would really very much increase the number of cases reported, whereas we are strongly inclined to think, and we believe the Profession generally think, that far too many cases are reported under the present system. If he intends that all the decisions of the Courts, reduced into writing by themselves or their officers, are to be sold to the public, the public would then be supplied with a quantity of matter, not one-fourth of which would be of the slightest use. If, on the other hand, he means that the public (and by the public we intend the legal public) should buy the selections of cases made by reporters, then he leaves us where we are at present—for very few instances can be given of any case of importance which the reporters, under the present system, have omitted. The complaint certainly is rather that they report too much than too little. But Mr. Williams may say, and with some justice, that reporters do not always give correct reports of the judgments. This defect in the case of written judgments, at all events, would be obviated by an easier access to those judgments being afforded to all the reporters. In the case of verbal judgments, no doubt, a short-hand writer, employed as an officer of the Court, would be a tolerably sure mode of recording what the judges say, and he might be instructed to furnish copies of his notes to such of the reporters as require them, on payment of a fee or otherwise. In which case those reports which are known to obtain copies of his notes would probably stand higher with the Profession than those which do not. So far we agree with Mr. Williams's propositions, as a more satisfactory and certain mode of obtaining the unwritten judgments would be secured. But supposing this to be done, those who now buy reports will continue to buy them, and to look to them only as the means of learning the decisions of the Courts. No one would dream of buying the whole mass of matter which Mr. Williams proposes to "print and publish as soon as possible, at the lowest price that will cover the expense of publication." Faith will still be put in the judgment and care exercised by the reporters in their selection of cases; and, moreover, there is another reason why the reports should be preferred.

In important cases, at all events, it is useful to have an abstract of the arguments of counsel, which throw light upon the judgments, and contain the authorities upon which they are grounded. Mr. Williams, of course, does not include these arguments in his scheme; he proposes only to reduce to writing, and print the judgments themselves.

Mr. Williams says, in another paragraph, "The records which form the sources of history are all officially preserved, but history itself is written by individuals whose success is proportioned to the ability they display in selecting and digesting." Now, it is not every trifling matter that occurs in the course of a nation's life, and involves no question of constitutional importance, which is recorded; it is only the striking facts and startling events that take place, not the everyday occurrences, which are registered; and, therefore, the historian who consults these records has not much labour in selection. His labour rather consists in searching for sources of information from other quarters; such as memoirs, diaries, and biographies. The records themselves would furnish but meagre materials for a history, and are never published separately, or, if published, find but few purchasers.

There must, in fact, be reporters. No schemes that we are aware of can dispense with them, or with the reliance which must be placed on their care and capacity. Mr. Williams's proposals do not appear to us to touch the evils which are alleged to exist in the present system, except so far as they might secure more correct copies of the judgments; and this can only be done by the judges taking upon themselves a task which would add very much to their labour, viz. superintending the notes of their decisions taken down by the short-hand writer, or by implicit faith being put in the accuracy of his notes, if the judges do not superintend. But surely skilful and able as the short-hand writers are, it is more likely that the reporters will be correct in their reports of the judgments than the short-hand writers, who are not thoroughly acquainted with legal phraseology.

We have thus stated what appear to us to be the defects in Mr. William's scheme. The subject is, no doubt, replete with difficulty and difference of opinion, and it is easier to criticise than to suggest. As we have stated, we think one great objection to his proposals is, that, as to a large proportion of the matters which come before the courts, the judges could not be expected "to peruse and sign a copy of their judgments taken down by a short-hand writer;" and, as to the residue, with respect to written judgments, no short-hand writer would be required; and, with respect to unwritten judgments, that there may be occasional mistakes made by the present reporters, but that, on the whole, they correctly report the judgments.

REMARKS.

Manual on Common Law. By JOSEPH W. SMITH, B. C. L., Q. C. Second Edition.

[Stevens, Sons, & Haynes.]

THE learned author tells us in his Preface to the Second Edition of this work, that it has cost him

nearly three years' labour to produce it. Considering the wide range of matter over which the Manual extends, we can easily understand the amount of toil and care and research which he has expended upon it, and we congratulate him upon the result. With reference, however, to one class of persons to whom Mr. Smith seems to think the work will be useful, namely, students commencing their legal studies, we hold a different opinion. For such students we think the book would not be useful, inasmuch as the natural indolence of the human mind is such, that it seizes at any opportunity of acquiring knowledge without labour, and therefore many a student would be content to take for granted the propositions of law which he finds in a condensed form in the Manual, instead of searching them out for himself in the text-books and reports, and so engraving them in his mind by labour and reflection. To more advanced students and to the practitioner, whether barrister or attorney, we think the Manual a most useful and convenient companion, enabling them, as it does, speedily to refresh their memories on any rule of law on which they may be called upon to advise, and referring them to the authorities on which the rule is founded. Few practitioners can have failed to observe how strangely the most elementary rules of law occasionally slip out of the mind, rules which a man knew well when he was a pupil, but which, simply, because he has not had for some time to consider them, he forgets or feels doubtful upon. This Manual of Mr. Smith's is a protection against such accidents. It is compiled with the scrupulous care and the ability which distinguish Mr. Smith's previous works, and it enables the reader, by investigation of the authorities cited, to test the accuracy of the propositions which are laid down in it. By persons who already have acquired some knowledge of the subjects of which it treats, and also by the layman, who wishes to have a general knowledge of those branches of the law with which, in his course through life, he may come in contact, we think this Manual will be found a most useful guide.

Dialogue between a Doctor of Laws and a Student, touching the Reasons why the Lord Chancellor's "Land Transfer Act is not generally used."—Pp. 18.

[Sweet.]

THE doctor defends the solicitors from the Lord Chancellor's charge of combining to prevent the use of his act, and asserts, that the real reason why the act is not used is, "that the solicitors are compelled to comply with the desires of the landowners themselves, whose eagerness to possess large landed estates, and to retain them, and to transmit them entire to their descendants, causes that great length of deeds, of which so much complaint has been made, and adds to the expense of every fresh sale." He explains, in a few words, and very clearly, the essential difference between settlements of land and settlements of stock, as regards the mode of dealing with the settled property. "The local influence and importance which attach to the ownership of land, and the love of territorial aggrandisement, induce men even to borrow money to enable them to become landed proprietors, or to enlarge the existing boundaries of their estates. You can easily imagine, then, how a landed proprietor, with the love of acquiring

land, will adopt any shift or contrivance to enable him to keep it in his family, rather than sell any part of it; he will mortgage it, charge it with jointure and portions; in short, do anything rather than sell; for however deeply a landed estate is thus charged and burthened, the owner still remains in the eyes of the world the sole proprietor, and retains almost the same local influence and prestige as if the estate were unincumbered. You will easily see that this is not the case with a money fund. The natural way of providing portions out of it is, by selling enough to raise them. There is no object in keeping the fund in existence, as a large money fund, charged to nearly its full value with all sorts of incumbrances; no local influence attaches to such a property."

The remedy, according to the doctor, for the complication of titles produced by settlements and charges is, not to establish an incumbered estates court, but to abolish the variety of modifications and subdivisions of which the legal and beneficial ownerships are now capable. A fee-simple and a lease for years should be the only legal estates; and an estate for life and a reversion in fee the only equitable interests. "For you will readily understand, that after a purchaser has become the registered owner, with the simple title conferred by the act, he will, while the present state of things last, immediately begin to settle, tie up, and incumber his property as before; and all his deeds of settlement will be precisely of the same purport, and of the same length as at present. Moreover, they will all have to be registered at full length in the register office."

It is not, we think, in the future that practitioners see the main objections to the use of the act. They justly fear the delay and additional expense attending the establishment of a Parliamentary title, with the chance of failure, on technical grounds, after all; and as titles are practically safe and sound, without the help of Lord Westbury's Office, they see no inducement to incur delay and expense.

The doctor does not hope that landowners will be persuaded to give up the substance of any of the powers they now have in settling and charging land, and we agree with him. It is neither to be expected nor to be desired that they should do so. The palliatives he suggests are—1. That the registrar should be authorised to accept any title that is satisfactory to him, though it be not strictly marketable. 2. That the public advertisements required by the act should not be required. The Court of Chancery will form a marketable title in a purchaser without any advertisement; and a purchaser has as just a claim to protection as any existing latent claimant. 3. That the registrar should have authority to decide questions of boundary. 4. That the period of limitation of actions and suits relating to real property should be reduced to ten years.

The doctor thinks that the act, even as it stands, will be very useful to persons intending to mortgage their estates. We doubt this. Few persons commence a course of mortgaging of malice prepense, or with any anticipation of the ultimate consequences. The progress of the disease is in most cases slow and insidious.

We must wait for the true remedy until the Seals change hands. The first step in the course of law reform to be taken by the next holder of them is obvious and safe, and will not be a small one. It will be to repeal the Land Transfer Act with the rest of "Lord Westbury's Acts." It will not then be very difficult to establish a system of bookkeeping in a public office, which will shew by mere inspection the actual state of any title at any given moment.

Imperial Parliament.

HOUSE OF LORDS.—Monday, July 25.

The royal assent was given to the Inland Revenue (Stamp Duties) Bill.

The Stamp Duties Amendment Act passed through committee.

Tuesday, July 26.

The Judgments Law Amendment Bill was read a third time, and passed, Lord St. Leonards opposing it strongly.

The Criminal Justice Act, 1855, Extension Bill passed through committee.

The Stamp Duties Act Amendment Bill was read a third time, and passed.

HOUSE OF COMMONS.—Monday, July 25.

Colonel W. Patten rose to call the attention of the House to the report of the committee on the Revision of the Standing Orders. The committee, after much consideration, resolved to recommend the adoption of certain resolutions; and if he could persuade the House to agree to the report of the committee, next session referees would be appointed, who would have, in connexion with private bills, to determine certain facts, the investigation of which would thus be withdrawn from the committees of the House. There was some delay in coming to a conclusion, in consequence of the reluctance of the Speaker to assume the responsibility of appointing the referees. The committee were, however, so strongly of opinion that it was desirable that the whole system should be in the body of the House, and unconnected with any public office, that they renewed their request to the Speaker, who was then good enough to express his willingness to undertake the duty if the House required it. The committee had made some alterations in the definition of subjects to be submitted to the referees. In regard to the second class of questions, for instance, it had been decided that only the details of traffic should be referred to the tribunal. Although the resolutions had not met with the entire approbation of all concerned, he was bound to acknowledge the spirit of fairness with which they had been considered. The parliamentary bar and the parliamentary agents had expressed their readiness to give the new system a fair trial, and such he understood was also the disposition of honourable members. If the resolutions did not accomplish the object with which they had been proposed to save the time of the House and to diminish the expense to suitors, he should be quite ready to move their repeal. The committee had agreed, not unanimously, but by a large majority, to recommend that Private Bill Committees should each consist of three instead of five members. Another alteration which was recommended with the view of expediting the private business of the House, and of advancing bills early in the session was, that the time allowed for petitions should be ten days after the first reading instead of eight days after the second reading. He moved the repeal of the present Standing Orders relative to private bills.

Sir J. Shelley thought that so important a subject should have been brought forward earlier in the year. The hon. and gallant gentleman had, however, in some degree, disarmed opposition, by pledging himself to move the repeal of the resolutions, if they did not prove effectual in saving the time of the House and the money of the suitors, as he for one feared they would fail to do. He understood his hon. and gallant friend to undertake, that if the new plan was not found satisfactory, he would propose its repeal. He was, however, afraid that it was exactly in the fact, that this was an experiment, that the real danger lay, and that this might be the first step towards taking away from the committees of that House their jurisdiction over private bills.

Sir F. Goldsmid questioned the expediency of the proposal for appointing referees. Experience, he thought, proved, that wherever the attempt had been made to divide a judicial inquiry into two parts, the one part to be dealt with by one tribunal, and the other part by another, the system had operated unsatisfactorily, and been attended with additional expense.

Colonel W. Patten moved, that the number of members be reduced from five to three.

Mr. H. Baillie objected to the reduction from five to three

members, on account of the effect it would produce should any of the members of the committee fall ill.

Mr. *Watkins* objected leaving private bills to be decided by committees of only three members instead of five.

Lord *Hotham* concurred.

After several divisions, it was settled that the number should be four; and the debate was adjourned.

Tuesday, July 26.

MUTUAL SURRENDER OF CRIMINALS (PRUSSIA) BILL.

On the motion for going into committee upon this bill which was given ante, p. 270,

Mr. *White* and Mr. *Hennessey* opposed.

After a long discussion, in which

Mr. *S. Fitzgerald* pointed out a difference between this and the French act, as this act compelled the surrender of a person in this country on the production of an authenticated copy of his conviction, and on proof of his identity.

The debate was adjourned.

Wednesday, July 27.

STANDING ORDERS.

Sir *M. Peto* opposed the changes proposed, and thought that too many restrictions ought not to be placed on promoters of bills.

Colonel *W. Patten* then proposed the adoption of a new Standing Order, that the Chairman of Ways and Means, with not less than three other persons, appointed by the Speaker, should be referees of the House on private bills.

Mr. *Massey* moved as an amendment, that they should not be members of the House.

Colonel *W. Patten* agreed.

Sir *G. Bowyer* doubted if an engineer of eminence would act as referee. He thought that the promoters ought to be obliged to put in a written statement of their facts.

Mr. *Ayrton* thought it wrong to exclude members from being referees. The House ought not to abandon the privilege of dealing with these bills, but ought to adopt a regular set of rules.

Mr. *H. Baillie* opposed the scheme.

Mr. *A. Mills* wished to have the committees armed with additional powers.

Mr. *Roebuck*, Sir *J. Shelley*, and Mr. *S. Booth* thought it too late to bring this matter before the House, and proposed an adjournment for a month.

Mr. *Lowe*, Mr. *D. Griffith*, and Lord *Palmerston* opposed an adjournment.

The motion for an adjournment was lost.

After much more discussion, the rule as amended was adopted.

The Speaker said he should have been glad if some indication had been given of the persons whom the House wished to be appointed referees. There seemed to be an objection to engineers.

On consideration of another rule, it was stated, that the referees would be paid under a vote of the House.

On Order 86 D., which prescribes that rules of practice and procedure should be made by the Chairman of Ways and Means,

Sir *J. Shelley* moved, that only one counsel should appear before the referees on each petition. This would save much time and expense to the parties.

Sir *M. Peto* asked whether any counsel at all were necessary? Surely the solicitors and agents could do all that was wanted. If counsel were let in, not one or two, but half-a-dozen courts would be necessary.

Colonel *W. Patten* said, it was at the suggestion of the parliamentary agents themselves that counsel were to be admitted. The Chairman of Ways and Means, however, would be empowered to regulate the proceedings before the referees.

Mr. *M. Gibson* did not think it right to lay down any rule against the employment of counsel altogether.

Dr. *Brady* said, that the parliamentary agents were interested in the employment of counsel, and was of opinion, that by excluding counsel business would be facilitated, and the expenses reduced.

Mr. *Locke* said, that perhaps the hon. gentleman would like the parties to toss up which side should win. The employment of counsel was for the interest of the parties, who naturally desired that their case should be stated in the best

manner, and the right to retain counsel for the purpose of these proceedings ought not to be restricted.

Mr. *S. Fitzgerald* supported the proposal of the hon. baronet, that only one counsel should be allowed to appear. It would not be desirable to leave the Chairman of Ways and Means, who was himself a barrister, to adopt what might appear an invidious rule to his profession.

Mr. *Ingham* thought the proposal of the hon. baronet a reasonable one.

Mr. *D. Griffith*, acknowledging the efforts of the President of the Board of Trade to regulate the fees of the parliamentary bar, asked whether any further success had attended them.

Mr. *M. Gibson* could not give much information on this subject beyond that which was already in the possession of the House. The doctrine which he held was simply this—that the fees of the parliamentary bar should be regulated as the fees in the ordinary courts of law and equity were regulated. He was informed that the doors of the committee rooms were now thrown open, and that members of the equity and common-law bars could now come in and practise there without incurring the displeasure of the parliamentary bar.

Mr. *Cox* pointed out, that by allowing only one counsel to appear in each petition, the promoters would have but a single counsel against, perhaps, half a dozen retained for different petitions against the bill.

Captain *Jervis* thought the restriction a most salutary one, for the result would be the employment of one counsel, who would stay throughout the proceedings, and attend exclusively to the case.

Order 86 D., as amended, was then agreed to.

On the consideration of Order 86 E., which was as follows:—"The referees shall inquire into all or any of the following matters as to which parties petitioning against any bill desire to be heard in opposition, viz.—1. In the case of bills of the second class, for authorising the construction of works, the engineering details of the undertaking, the efficiency of the works for the proposed object, and the sufficiency of the estimate for executing the same. 2. In the case of bills for authorising a new line of railway, the statistics of the traffic proposed to be accommodated. 3. In the case of water-work bills, the nature and amount of the existing, and the proposed source of supply, the quality of the water in each case, and the provisions as to storage reservoirs. 4. In the case of bills, the quality of the gas, the existing supply and its price, the amount of pressure, the cost of production, and the modes of testing the purity and illuminating power of the gas."

After a short discussion, this order, except clause 2, was passed.

Colonel *W. Patten* then moved Order 86 F.:—"So soon as the inquiry into the matters referred to them upon any bill has been completed, the referees shall make their report upon the same to the House, and the report shall thereupon stand referred to the select committee on the bill. No further evidence shall be taken by the committee to prove or disprove any of the facts reported by the referees."

This order, with an amendment that the committee were to state their reasons, was carried.

Several other Standing Orders as to the referees, were then passed.

Mr. *Scourfield* moved a string of resolutions as to the bona fides of deposits and subscriptions, but withdrew them.

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THE JURIST.

LONDON, AUGUST 6, 1864.

THE pending discussion upon the existing system of law reporting, and upon the amendments proposed to be made in it, naturally lead to a consideration of legal literature generally, and of the merits and demerits of modern publications of this description. A simple-minded person would infer, from the number of such books which are brought into the world, that the authorship of a law book was a certain source either of immediate profit, in the way of a large sale of the work, or of ultimate profit, in the shape of an establishment or increase of reputation to the author. But that the real state of the case negatives such an inference, few, we think, will deny; and it is a question of some interest why so many learned gentlemen expend so much time, and labour, and midnight oil, upon the composition of works the greater portion of which are doomed only to line trunks, or serve as wrappers to more favourite productions. To a certain extent, the increase in the number of legal publications is caused by the increase of our statute-book, and by that enlarged development of our laws generally which is created by the lapse of time, and the many new combinations of circumstances to which those laws have to be applied, and which give rise to discussion as to the applicability of this or that law; but the whole increase cannot be attributed to this cause. There is a rage for legal authorship which must be traced to some other source. Now, whether a book be on a legal or a lay subject, at all events there is a motive which may be common to all authors—viz. a desire to compose a work which will really and truly explain, and teach and illustrate, the subject of which it treats, so as to make it intelligible to those for whom it is intended, and to acquaint them with the sources from which the author has derived his information, and the views which he propounds. A law book of this description we may style a law book of the first class—a book on which care and labour have been expended, which is written with the view of setting forth the law upon the particular subject—dividing into proper heads, and lucidly arranging, the several branches of the subject, and faithfully giving the authorities in the shape of common-law statutes and cases, by which the law has been created and altered. One difference between books on a legal and books on any other subject is, that in the latter the reader looks for the opinions and experiences of the author himself upon any moot point discussed in his book; whereas in a law book the author's opinions are not required, and, indeed, unless he is an acknowledged sage of the law, might be considered presumptuous. It is his duty to set forth the different judicial opinions entertained upon any point, and he may modestly say to which side his own inclines; but it is certainly not a defect in a law book that the author withholds his own views. It would be invidious to mention any particular modern law book which we consider especially worthy of the character of a first

class book. There are several such books, but few will say that they form a large proportion of the books which are written. Horace says, "*Est vetus atque probus centum qui perficit annos.*" How many law books are there which are likely to reach this age? Expensive works are daily published, which must or ought to have exhausted the energies, and power of labour and application, of their authors, and they die almost in their birth. It is, indeed, a discouraging thought to those who are inclined to increase the stock of good books, and compose works which will outlive them, and be useful to their professional brethren, that the probability is, their labour will be expended in vain; and the reflection is not enlivened by the further thought, of the great amount of repulsive investigation, and dry uninteresting labour which a legal author, who really wishes to be scrupulously careful and accurate, must undergo. In fine, the man who has written a solid, well-digested, and learned book on an important legal subject deserves much more of his Profession than is generally admitted, and, moreover, deserves to stand high among them as a man of honesty, and energy, and ability.

There is another class of law books, including by far the greater number of legal publications, which do not profess to treat of an entire subject; they take a particular branch, which may happen at the time to be exciting attention and discussion, or they may be limited, further, to some particular point. Now, we doubt whether one-tenth of these books pay the expenses of publication. In the first place, the class of purchasers is limited, namely, the legal Profession; and, in the next, very few of that limited class are fond of buying books. The barrister in practice starts with his few standard text-books, and only thinks of increasing his law library by the reports. If he has an excess of money, he does not spend it in literature of this description, and, in fact, we think it will be found that the older a man grows, the less inclined is he to buy books which are not actually necessary for his practice. Then what does become of all these publications, and how is it that there continues to be such a supply of them? The most probable way of accounting for it is, that it is considered useful to a man to have written a book, no matter whether the book is well written or not, or whether it is extensively read, or is published at a loss to the author or the publisher. The book has been advertised for some time before its appearance, and so the author's name is circulated. In fact, instances might be mentioned of books so advertised which never appeared at all. Many persons think that, because a man has written a book upon a particular subject, he must know more about it than other persons do. They do not read the book themselves, and they give him credit for having well and ably studied the subject on which he writes. At all events, we believe it is the hope that some persons will so think which causes many law books to be written. This may be a perfectly fair and reasonable hope; but still a man who publishes a book surely owes a duty to the Profession, namely, the duty of composing a work which shall be as correct and useful as he can make it, so that the

time and money of those who purchase it may not be wasted. It is to be feared that many purchasers of modern law books do complain that their time and money has been thrown away, so much so, that a really good book enters upon the world with a prejudice against it which it is difficult to overcome.

It may be said, that if people are so silly as to think a man must be profoundly acquainted with a subject, because he has written a book upon it, they should be left to the consequences of their simplicity, and learn wisdom by suffering; and that if a man chooses to write a book which does not pay the expenses of publication, the cost is his; and supposing he does gain any advantage by the advertising of the book, it can be but for a short space of time, unless he is really well acquainted with his subject. All this may be quite true if an author owes no duty to his Profession. When we are considering the present condition of legal literature, and the causes of that condition, it does occur to us that a legal author, as we have already observed, does owe a duty to his Profession; and that, for the sake of the Profession, it is incumbent upon him to write as good a book as he can, and to expend all necessary time and labour upon it. He should work at it in the hope that, sooner or later, an able work, on a well chosen subject, makes its way into, and attains its proper position in, public opinion, and repays, by increased circulation and increased reputation, the care and labour which its author has expended upon it.

While upon the subject of legal publications, we cannot refrain from making a remark which addresses itself rather to the publishers than the authors of law books. We refer to the present fashion of binding such books in colours, which make them look more like novels, or biographies, or books of travels, than books on a grave and difficult subject. Why should a law book be sent into the world with a binding of bright green or bright yellow colour, such as adorns the books issued by the fashionable publishers. Binding of a sober hue is better adapted to a work which requires, or ought to require, close reading and earnest thought; whereas we look generally for light matter and easy reading in books which have these bright and fanciful bindings. We shall not be surprised to see a portrait of the author in the next law book which comes out so gorgeously dressed.

This subject of binding is, of course, but of trivial importance when compared with the inside of the book; but a feather shews which way the wind blows, and it may be that this change from the sober colours in which law books used to be bound to bright and glowing hues is some indication that less care is taken about the composition of the books themselves, and that it is sought rather to attract the eye than the intellect of the purchaser.

REGISTRAR IN BANKRUPTCY.—The Lord Chancellor has appointed Mr. P. R. Welch, of the Middle Temple, Barrister-at-law, to be a Registrar of the Court of Bankruptcy for the Leeds District, in the room of Mr. Wilde, retired. Mr. Welch was called to the bar in 1839, and has for many years gone the Northern Circuit.

Correspondence.

TITLE TO LAND.

TO THE EDITOR OF "THE JURIST."

SIR,—In your last number, under a review of "A Dialogue on the Lord Chancellor's Land Transfer Act," practitioners are represented as considering titles to be safe and sound.

The case of *Hunt v. Eames* (7 Jur., N. S., part 1, p. 200) appears to be an authority for the proposition, that a bona fide purchaser, for valuable consideration, without notice, is liable to be dispossessed, though holding the *genuine* title deeds and vendor's conveyance. The case of *Taaffe v. Conmee* (8 Jur., N. S., part 1, p. 919) shews the confusion which exists on the meaning of the word "survivor," when applied to real estate.

Mr. Joshua Williams, in his work on Real Property (6th ed., p. 377), draws attention to theoretical danger.

Permit me to ask the practitioners who are represented to assert the state of titles to be "safe and sound," how they reconcile their opinion with the authorities above given?

Your obedient,
W. S.

August 3, 1864.

JUDGMENT, &c. LAW AMENDMENT—27 & 28 VICT. c. 112.

TO THE EDITOR OF "THE JURIST."

SIR,—I would call the attention of the Profession to the important alteration effected by this new act, in the law of judgments as they affect real property.

Sect. 1 enacts, that no *future* judgments shall affect any land until such land shall have been actually delivered in execution.

Sect. 3 provides, that every execution under which any land shall have been so delivered, shall be registered in the Common Pleas in the name of the debtor. [It is presumed, that in such case the creditor should register his writ of execution forthwith.]

Sect. 4 further provides, that any creditor to whom any land shall have been actually delivered, and whose execution shall have been duly registered, shall be entitled forthwith to obtain from the Court of Chancery, upon petition in a summary way, an order for the sale of his debtor's interest in such land.

Purchasers, with or without notice, will not, therefore, be bound by any future judgments till the creditor is in possession. Of this fact, and of the intention of the creditor to apply for an order for sale, due notoriety will be given by registration, and all persons claiming any interest in such land, as well as purchasers, may inform themselves, by inspecting the register, of the intention of the creditor to apply to the Court for an order for sale, and they will be entitled to the proceeds according to their respective priorities. A creditor, after having complied with the requirements of the act, may, without waiting for the expiration of the year (see the 1 & 2 Vict. c. 110, s. 13), petition the Court forthwith for an order for sale.

It may be inferred, that a judgment creditor will not take any priority as to his debtor's land until the land has been actually delivered in execution. Therefore creditors must not rely on their judgments as affording them any security, or giving them any preference, until they are in possession of their debtor's land.

It is important for purchasers to remember, that the new act has not a retrospective operation, therefore the search must continue to be made for judg-

ments already registered, until they shall be satisfied or become inoperative by effluxion of time from want of re-registration.

The act seems to contemplate, in all cases, delivery of the land in execution—are advowsons, remainders, equities of redemption, and such other interests as, among others, were affected by the 13th section of the 1 & 2 Vict. c. 110, and could not be extended by legal process, touched by this act? In other words, is the section, in effect, *wholly* repealed? Should such have been the intention of the Legislature, it would have been more satisfactory, if the clause had been repealed in direct terms. If the creditor has still a lien on such interests as cannot be taken in legal execution, he must register under the 1 & 2 Vict. c. 110.

I am, Sir,

Yours most obediently,

JAMES PASK,

Registrar's Chief Clerk,
Common Pleas Registry.

Aug. 3, 1864.

THE NEW ORDERS IN CHANCERY.

TO THE EDITOR OF "THE JURIST."

SIR,—It is somewhat singular that at the time when the Lord Chancellor, in his great and unaffected zeal for law reform, is proposing to enlarge as much as possible the hole and corner jurisdiction at chambers, the following should be the subject which has been selected for the "discours de rentrée" of the Paris Bar:—

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Your very obedient servant,

R. E. T. B.

Parliamentary Reports and Papers.

JUDICIAL STATISTICS, 1864.

FROM a large blue book with this heading, numbered 9018, we make the following extracts, giving the round numbers in many cases:—

Number of Police, 1863.

Borough	6471
County	8190
Metropolitan	6590
Dock Yard	743
City	628

22,622

The total cost was 1,658,265*l.*, averaging 73*l.* a head.

The police make the following return as to the criminal or vicious classes:—

Known thieves	28,000
Receivers	3,500
Prostitutes	29,000
Suspected	32,000
Vagrants	33,000

Of course, these returns are somewhat speculative, but are made with some care, and ought to be a fair approximation. We are, however, staggered to find a statement, that in London these classes form 1 in 243 of the population, and in what are termed the pleasure towns (Brighton, &c.), 1 in 81; but when we refer to the Report (p. xviii), we find—

Thieves known at large.	Offences.	Apprehended.
Metropolis	2641	14,036
Pleasure towns.	746	790

As a late Queen's counsel was accustomed to say, we suspend our judgment, but no power on earth will persuade us that the thieves in London are so much more active than those in the pleasure towns, as to commit rather more than five offences a-piece, whilst those in the pleasure towns only manage to commit one a-piece. If we suppose that as there were 14,036 offences, there are 14,036 thieves at large in London, we shall probably be more near the truth.

Besides these classes, there were—

In local prisons	18,000
In convict prisons	8,000
In reformatories	3,200
Debtors	623

52,000 crimes were committed, and 30,000 persons apprehended; in the winter quarter there is an excess of one-seventh above the summer quarter.

The persons apprehended before the magistrates were disposed of as follows:—

Discharged	9,300
Bailed	1,600
Committed for trial	19,500

Of those sent to trial, about 16,000 would be convicted.

	Offences.	Apprehended.
Against the person	3,000	3,200
Against property, with violence	5,400	3,000
Malicious	760	780
Other offences	43,000	23,000

Besides those sent to trial, 283,000 persons were summarily convicted before the magistrates. 235,000 men, and 48,000 women. 75,000 of them were committed, 171,000 were fined. Upwards of 45,000 of these committals were for offences which would formerly have been sent to trial.

The convictions under the game laws amount to 9680; for drunkenness, 95,000.

22,757 coroners' inquests were held at a cost of 71,000*l.*

The numbers sent to trial appear to have reached a maximum in 1848, when 30,000 were committed; and a minimum in 1860, when 16,000 were committed; in 1863, the number was 20,000.

The sentences have been as follows:—

Death	29
Penal servitude:	
For life	20
Above 10 years	130
3 years	2,900
Imprisonment	12,000
Reformatories	240

The sentence of death was executed in 22 cases.

Only 16 cases came before the Court of Appeal.

The cost of each prosecution is as follows:—

Circuit Assize Courts	£14 0 0
Central Criminal	6 0 0
County Quarter Sessions	8 0 0
Borough Quarter Sessions	6 0 0
Criminal Justice Act	1 0 0

These do not include the Mint cases, or those prosecuted under the direction of the solicitor to the Treasury.

The proportion of persons committed born in—

England	80.0
Scotland	1.8
Ireland	15.0
Foreigners	1.4

35 per cent. could not read or write; only 3.5 per cent. could read and write well; 0.2 had superior instruction.

The average annual cost of each prisoner in the local prisons, including all charges, is 29*l.* The highest,

being at Oakham, 102*l.*, and the lowest, at Salford, 15*l.* The total charge is 439,000*l.* The average cost of each convict is 33*l.*, varying from 42*l.* at Dartmoor to 23*l.* at Parkhurst.

The deaths in the convict prisons have been 1 to 110 of men, and to every 71 of women. In 1862 it was only 1 to every 154 of men, and to every 324 of women.

There is a very large increase in the number of prison punishments. In every prison the officers' wages, &c., are equal to, or exceed, the cost of the prisoners' diet and clothes.

Common Law.

The Courts of Queen's Bench, Common Pleas, and Exchequer have got through the following amount of business, shewing a slight decrease on the two previous years:—

Writs of summons issued	100,000
“ capias	600
Appearances entered	27,000
Judgments	34,000
Executions	24,000
Motions for new trials	561
Special motions	846
Hand motions	3,180

Trials.

Westminster	1,160
Nisi Prius	959

The amount of fees received on the plea side was 67,500*l.* The total amount recovered was 263,000*l.*

County Courts.

In the county courts—

Total plaints entered	800,000
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Causes determined—

With a jury	877
Without a jury	441,428

Total	442,305
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Warrants of commitment	28,000
Debtors imprisoned	8,588
Executions against goods	130,000
Sales made	4,000

Total amount claimed by plaints	£1,840,000
Judgments obtained for debts	939,000
“ costs	39,000
Total amount of fees	263,400

There is a slight decrease in each item on the previous year.

Bankruptcy

In the year ending the 11th October, 1862, there were 9663 adjudications of bankruptcy; in the year ending the 11th October, 1863, 8470, 6144 of which were on the petition of the debtor. The gross produce of the bankrupts' estates realised was 700,000*l.* In 996 cases only was there a dividend, in 459 of which it was under 2*s.* 6*d.*; in 20 it was full. The total gross amount of the bills taxed was 94,000*l.* The fees received by the messengers amounted to 35,000*l.*, out of which 27,000*l.* was paid. The total revenue of the court was 124,000*l.*, and total expenditure 119,000*l.*

Chancery.

The total number of causes, &c. disposed of in the year ending the 2nd November, 1863, was 1813, as follows:—

Pleas	9
Demurrers	55
Exceptions	13
Motions for decree	848
Causes	192
Special cases	15

Further considerations	500
Rehearings and appeals	108
Appeal motions	54
Appeal petitions	19

472 of these matters remained to be disposed of.

As, however, the return ends on the 2nd November, the number appearing on the return as remaining to be disposed of, means very little more than the number set down during the Long Vacation. 39 winding-up orders were made, 4000 orders were made on motion or petition, and 6500 on summons in chambers. The fees levied by stamps amounted to 12,900*l.*

The number of days on which the judges sat were—

Lord Chancellor	59
Lords Justices	131
Master of the Rolls	154
Vice-Chancellor Kindersley	162
Vice-Chancellor Stuart	159
Vice-Chancellor Wood	167

There were no sittings by the Lord Chancellor and Lords Justices together.

Summonses in chambers	18,000
Orders made by registrars	6,700
“ in chambers	5,400
Debts proved	£1,953,000
Accounts passed by receivers	594
Receipts therein	£6,637,500
Disbursements	£1,590,200
Sales under Court	594
Amount realised	£1,487,600
Winding-up orders pending	106
Amount of calls made	£473,000
Received on calls	159,000
Assets realised	263,000
Dividends ordered to be paid to creditors	313,000
Amount ordered to be refunded to contributors	32,000
Realised by sales	95,000
Disbursements for expenses in winding up	42,000

338 witnesses were examined before the examiners.

Bills and informations filed	2344
Special cases	18
Administration summonses	430
Other original summonses	285

26,186*l.* was collected by stamps in the Record and Writ Clerks Office.

Of petitions there were—

	Lord Chancellor.	Master of the Rolls.
In causes	654	308
Railways	507	7
Under statutes, and general	843	451

Besides 2900 for orders of course.

The total amount of costs taxed before the Masters was 730,000*l.*

In the Accountant-General's Office.

Paid into court	£17,203,000
Paid out of court	15,673,000

The total number of accounts was 25,000.

The Suitors' Fund appeared to possess 3,898,000*l.* Consols and 17,000*l.* cash.

The accounts of the Suitors' Fee Fund are not very intelligible; the income consisted of 96,000*l.* levied on the suitors, and of interest from the Suitors' Fund and other items, making a total of 162,000*l.*

The payments out of it were:—

Compensations	£ 33,000
Salaries	106,000
Expenses of copying	10,500
Miscellaneous	12,200

£161,700

In the Chancery Court of the County Palatine of Lancaster 149 suits and matters were originated; 132 were heard; 4000*l.* fees were received.

Lunacy.

There were sixty orders of inquiry on commissions.

Receipts by committees and receivers £403,000
Disbursements by ditto 345,000

These receipts and disbursements are exclusive of the cases where the Masters are satisfied as to the due application of the income by explanation.

Admiralty Court.

Causes instituted:—

Salvage	77
Collision	199
Others	209
	<hr/> 485

193 judgments or decrees were made, besides 391 motions and summonses heard; 42,703*l.* was found due; and the costs found due were 17,500*l.*

The Admiralty Court stamps sold were 9100*l.*

The Court sat on 118 days, and the registrar and merchants 23 days.

Divorce Court.

Petitions filed	323
Causes tried:—	
On oral evidence	179
On affidavit	—
Before a jury	58
	<hr/> 237

There were four applications for new trials. No appeal to the House of Lords. The total amount of fees is 2508*l.* only. It does not appear whether anything is reserved for stamps.

Probate Court.

In London:—	
Probates granted	8496
Administrations	4333
Trials and causes heard	40
Fees in court and contentious business	£1614
In the District Courts:—	
Probates	14,268
Administrations	7,800
Probate and Administration Stamps:—	
London	£740,873
District	549,415
	<hr/> £1,290,288

Privy Council.

Appeals lodged in 1863:—	
Admiralty Court	23
India	18
Colonies	19
Disposed of	40
Remained for hearing	90

The total costs taxed were 7900*l.*

There were nine applications for extension of patents, of which seven were granted.

House of Lords.

Appeals presented:—

From Chancery:	
England	15
Ireland	4
From Exchequer Chamber	5
From Scotland	23
Divorce Court	3
	<hr/> 50

Four cases were withdrawn; seventeen dismissed for want of prosecution; twenty-seven judgments were delivered. In ten, the judgments were affirmed simply; in three, varied; one partly reversed; four reversed simply; and nine reversed with declarations. Thirty-one causes remained for hearing.

GOING TO LAW.—In the year 1863, 100,042 actions were commenced by writ of summons in the superior courts of common law, a number slightly below the average. In 608 other cases actions were allowed to be commenced by writ of *capias* to hold the defendant to bail. Compared with these numbers, the causes that went to trial were very few. According to the returns made by the officers of the courts, 1162 causes were tried in the three superior courts, which seems to mean, tried in London and Westminster, and 1038 causes were tried at the assizes, numbers differing very little from the average. In the former class of causes the plaintiff had a verdict in 816 cases (but in 10 of them subject to a special case), and 52 were referred in court. At the assizes the plaintiff had a verdict in 660 cases (in 21 subject to a special case), and 93 were referred in court. The sums recovered by verdict amounted to 262,937*l.* Execution was issued in 23,752 cases—a number below the average—including, of course, cases in which the defendant did not put the plaintiff to a trial, but acknowledged the claim.

MR. SERJEANT MEREWETHER.—Mr. Serjeant Merewether, who was for seventeen years town clerk of the corporation of the city of London, has just died at his residence, Castle Field, near Calne, Wiltshire, at the age of eighty-four. During his tenure of office he received an annual stipend of 2000*l.* from the corporation, and after his resignation, in 1859, a pension of 1000*l.*, which now reverts to the civic funds. The deceased was called to the bar in May, 1809, and at the time of his death, as for many years before, held the rank of a Serjeant-at-law, with a Patent of Precedence. He was a Doctor of Civil Law and Attorney-General to the late Queen Dowager. For many years he held the office of Recorder of Reading, and went the Western Circuit. At one time, when he practised much before parliamentary committees, he is said to have realised an income of about 5000*l.* a year. He was elected to the office of town clerk of London in June, 1842, when he was sixty-two years of age, and from thence he relinquished his professional practice, in order to devote himself exclusively to the discharge of his duties. He resigned the office in his seventy-ninth year, from considerations of failing health and advanced age. He was very much respected in the corporation. The deceased had a large family, of whom five still survive, his eldest son being Mr. Henry Merewether, the eminent Queen's Counsel.

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THE JURIST.

LONDON, AUGUST 13, 1864.

THE late decision of the House of Lords in the *Yelverton case* affords an additional illustration of the very inconvenient and irrational practice adopted by their Lordships in delivering the judgment of the House. Of course, the original theory was, that the whole matter was a question brought before the House, on which each member had a right to speak, and which was decided by the vote of the House. But this has long ceased to be the practice, and, we may say, to be the theory either. At present, the House of Lords, in its judicial capacity, is merely the Supreme Court of Appeal, in which the Law Lords are the judges, and, as in every other Court, the decision is that of the majority of the judges. Such being the case, it would be very desirable that the practice of the House should be regulated accordingly, and, amongst other things, should assume the course which is rational and proper for a Supreme Court of Appeal, and, in delivering its judgments, should speak by the mouth of one judge only. This has been the practice in the Judicial Committee of the Privy Council—a tribunal which has, we believe, given great satisfaction to those who have had to do with it, except, of course, in questions of divinity, where satisfaction is impossible. The judges there debate the question between themselves, and decide in accordance with the opinions of the majority, one of whom then delivers the judgment of the Court. Now, in the first place, this system has the great advantage of dignity and decorum, and avoids the very unseemly and unjudicial scenes which have sometimes occurred in the House of Lords. We believe that one, at the least, of the noble Lords exhibited considerable feeling in the *Yelverton case*, and that a noble Lord, in delivering his sentiments, has been known to be so far excited as to shout and strike the table—unpaid judges appearing to feel much more acutely, and to be much stronger partisans, than the paid judges of the realm, who frequently differ in opinion, but are able to deliver their reasons calmly and judicially. In the next place, it is the rational system for a Supreme Court. Where the judges of inferior courts differ, they may very properly deliver their reasons severally, in order that the Supreme Court may, for its own guidance, be able to form an estimate of how far the inferior court was right, and upon what that Court acted. But in a Supreme Court this does not obtain; the decision, whether right or wrong, is final, and the adverse opinions are declared by the highest authority to be erroneous. According to the English system, the judgment of a Court of law has a threefold object: first, to decide the matter in dispute between the parties; secondly, to give such reasons as may satisfy the public, and if possible, the losing party, that he is wrong; and, thirdly, to lay down rules of law for the future. Now, for the first of these objects, the manner of delivering judgment is immaterial; for the second, it is possible that the losing party may derive

some small satisfaction from knowing that he was not hopelessly wrong; but this is a very slight matter, and is altogether unimportant as compared with the third, which, to the professional eye, at all events, is the most important of all. The arguments of the minority may be admirable, and in the eye of reason they may be the best, but in the eye of the law they are wrong—settled for ever to be erroneous as applied to facts, or bad as applied to law; and what is the use of propounding bad law? It may be said, that if the decision is wrong logically and in the eye of reason, the publication of the differences among the judges will encourage other suitors in attempts to have the law corrected by future appeals. But the simple answer to this is, that all such speculative attempts to alter the law ought to be discouraged, for in civil matters, at all events, a fixed bad law is better than any uncertain law—one is a rock which a skilful pilot can always avoid being wrecked upon, the other is a shifting sand which may swallow up the most wary; and there can be but little doubt which of these two is the most dangerous and mischievous. The House of Lords is notoriously, and very properly, averse to change, even under the present Lord Chancellor; but if it is to preserve its appellate jurisdiction, it should take every means to exercise that jurisdiction in whatever may be the most perfect and decorous manner, and would do well in this respect to adopt the practice of the Judicial Committee of the Privy Council.

Connected with this subject, a somewhat curious speculation as to the value of authority has lately occurred to us, and we believe that a case very similar to our hypothetical case actually occurred before the House of Lords, as to the admissibility of evidence. Suppose that there are three judges, and that the defendant has two independent defences—say that he has pleaded the Statute of Limitations, and has a defence on the merits. Now, it is quite possible that Judge A. may be with the plaintiff on both points; Judge B. with the plaintiff as to the statute, with the defendant as to the merits; Judge C. with the defendant as to the statute, with the plaintiff as to the merits. The result would be, that the decree must be for the defendant, as B. and C. would be against the plaintiff, and yet on each separate point the plaintiff would have two judges to one in his favour. We do not see how this could be avoided, and, as a case of individual hardship, we do not think it very grievous, for the question must have been very doubtful; but what would be the value of this case as an authority? If the judges all delivered their opinions, would it be cited in support of a case like the plaintiff's, or of a case like the defendant's? Even in this case, which may seem to make against our preference for one judgment, we should still prefer the one judgment, as deciding two very doubtful questions, instead of leaving them open for future debate.

APPORTIONMENT.

THE question of apportionment of rents, and other payments on the death of a tenant for life, is of very frequent occurrence, and though simple at first sight,

does not always admit of an easy answer. It is proposed briefly to consider the law on this subject, as governed by statutes and recent decisions of courts of equity.

At common law, as is well known, no payments whatever, becoming due after the death of the tenant for life, were apportionable, but the whole, whether arising from real or personal estate, went to the reversioner. Interest on money secured by bond or mortgage formed the only exception to this rule, as it was considered to become due from day to day, although by arrangement it might be made payable half-yearly or otherwise. (*Banner v. Lowe*, 13 Ves. 134; *Edwards v. The Countess of Warwick*, 2 P. Wms. 176). In the same manner, the representatives of a lessor could recover nothing in respect of rents accrued but not due under leases which determined with his death, the lessee in this case taking the benefit. (1 Swanst. 338, note). This remarkable anomaly in the law was cured by the stat. 11 Geo. 2, c. 19, sect. 15 of which enacted, that when a tenant for life died before or on the day on which any rent was reserved or made payable upon any demise or lease of lands which determined on his death, his representatives should recover from the under tenants a proportionable part of such rents, or the whole in case he died on the day of payment. The operation of this statute was extended by the 1st section of the 4 & 5 Will. 4, c. 22, commonly called the Apportionment Act, to every case in which any demise or lease determines on the death of the person making the same, or on the death of the life or lives for which such person was entitled.

The great change in the law on the subject of apportionment was, however, made by the 2nd section of the Apportionment Act, which provides for the apportionment on the death of the person interested, or the determination, by any other means, of the interest of such person, of all payments made payable, or coming due at fixed periods, under any instrument in writing executed, or a will coming into operation after the passing of the act.

The language of the Apportionment Act is so comprehensive, that the doubt has now become what is not, rather than what is, apportionable.

Several important questions have, however, arisen upon the construction of the 2nd section. First, it has been decided that the words "instrument in writing" mean either the instrument creating the periodical payments, or that creating a life interest in them. In *Knight v. Boughton* (12 Beav. 312), a testator, who died in 1838, gave a life interest in certain parts of his estate to his widow; it was held, that the rents receivable on the next rent-day after the decease of the widow under leases made before the passing of the act, were apportionable. In *Plummer v. Whitely* (1 Johns. 585; 5 Jur., N. S., part 1, p. 1416), powers of leasing given by a settlement made before the passing of the act had been exercised after the act came into operation; it was held, that rents under these leases were apportionable. (See also *Wardrop v. Cutfield*, 10 Jur., N. S., part 1, p. 194).

Again: difficulties have occurred in determining what is a "fixed period," within the meaning of the act.

In *Hartley v. Allen* (4 Jur., N. S., part 1, p. 500), the question of apportionment was raised with respect to shares in the Peninsular and Oriental Steam Navigation Company. By the deed of settlement of the company, the profits were to be divided rateably amongst the proprietors, to such amount as the directors should from time to time decide upon, and as should be declared at the annual half-yearly meeting; the directors were to cause such dividend to be paid within twenty-one days after it should be declared. It was held, that the dividends were payments becoming due at fixed periods, and were apportionable. And where, by a resolution of the company, the profits and accumulations were to be divided half-yearly, and such half-yearly dividends were to be paid and payable in April and October of each year, it was held, that the dividends were apportionable. But where the time for payment of the dividends depends upon the holding of a general or other meeting, at which the dividends are to be declared, and for which no precise time is fixed, although it may be provided that one or more such meetings shall be held in every year, then the dividends will not be apportionable. (*Re Maxwell's Trusts*, 1 Hem. & Mil. 610; 9 Jur., N. S., part 1, p. 360). Upon the same principle, royalties reserved in mining leases, and payable when the ore should be procured, are not payments falling due at fixed periods, and therefore are not apportionable. (*St. Aubyn v. St. Aubyn*, 1 Drew. & S. 611).

The determination of the interest of the person entitled is required by the act. It has been held, that this does not apply to the case of a person absolutely entitled, and, therefore, there will be no apportionment between the heir and personal representative of a tenant in fee. (*Brown v. Amyot*, 3 Hare, 173). And where there was a devise in trust for W., who was the heir of the testator, for life, with remainder to the first and other sons of W. in tail male, with remainder to the right heirs of the testator, it was held, on the death of W. without issue, that notwithstanding the interposition of an estate tail which might have arisen and prevented the remainder in fee from vesting absolutely, the death of the devisee was not such a determination of his interest as is contemplated by the statute, and that the rents were not apportionable. (*Re Chislow's Estates*, 3 Kay & J. 689). It would also seem that there will not be apportionment between the representatives and the devisees or legatees of a testator, though the point has not been expressly decided, but payments apportionable independently of the statute would be apportioned. (*Re Roger's Trust*, 1 Drew. & S. 388; 6 Jur., N. S., part 1, p. 1363). The act, however, applies to all cases in which the interest of the person entitled is determined, whether by death or other means. Thus, where lands had been devised to trustees for a term, upon trust to accumulate the rents, and apply them in payment of debts and legacies and other charges, with remainder to a tenant for life, at the expiration of the term, it was held that the rents were apportionable. (*St. Aubyn v. St. Aubyn*, 1 Drew. & S. 611).

The 3rd section of the Apportionment Act provides, that it shall not apply to any case in which there is an

express stipulation that there shall not be apportionment, or to annual sums payable on policies. But no mere inference can now exclude apportionment; nothing but an express declaration, or language so express that apportionment would be clearly impossible consistent with it, can exclude the operation of the act. (*Tyrrell v. Clark*, 2 Drew. 86).

It has been decided that interest on railway debentures, inasmuch as it accrues due from day to day, is apportionable independently of the statute. (*Re Rogers's Trusts*, 1 Drew. & S. 338; 6 Jur., N.S., part 1, p. 1363). Annuities determinable on the death of the grantor do not fall within the act, and are not apportionable unless given for the maintenance of infants, or of married women living separate from their husbands. (*Leathley v. Trench*, 8 Ir. Ch. Rep. 401). Rents reserved on parol demises are, of course, not within the statute, which requires, in every case, an instrument in writing. (*In re Markby*, 4 My. & C. 484; *Cuttle v. Arnold*, 1 Johns. & H. 651; 5 Jur., N.S., part 1, p. 361).

Rent-charges under the Tithe Commutation Act, 6 & 7 Will. 4, c. 71, and the Copyhold Enfranchisement Act, 4 & 5 Vict. c. 35, are expressly made within the provisions of the Apportionment Act.

It follows, therefore, that all periodical payments whatsoever, reserved by some written instrument, are apportionable in favour of a person entitled for a limited interest, or his representatives, unless the time for payment be uncertain; and no other payments are apportionable unless they accrue due from day to day (*Re Rogers's Trusts*, 1 Drew. & S. 338; 6 Jur., N.S., part 1, p. 1363), or are annuities granted for the maintenance of infants (*Hay v. Palmer*, 2 P. Wms. 501), or of married women living separate from their husbands (*Howell v. Hanforth*, 2 Bl. Rep. 1016), or are rents reserved under parol demises terminating with the interest of the person entitled. (See *Kewill v. Davies*, 15 Sim. 466.)

On another occasion it is proposed to consider the cases in which courts of equity have decreed apportionment of payments not falling within any of the above rules.

Correspondence.

PARTNERSHIP.

TO THE EDITOR OF "THE JURIST."

SIR,—The ill success which has attended recent endeavours to amend the law of partnership is much to be regretted. The existing law upon this subject, which, in a commercial country like England, affects the interests of so large a portion of the community, is, perhaps, in a more unsatisfactory state than any other branch of mercantile law. To give a correct answer to the question, what does not constitute a partnership? is a task requiring considerable acquaintance with judicial decisions, as well as a power of clear discrimination. It is, however, a question of continual occurrence, from the frequency of transactions in which a capitalist desires to share the profits of a business, and at the same time to avoid the enormous liabilities which might be involved in its failure, through no fault of his. It is a well-known rule of

law, that any arrangement under which a person was to be entitled to an uncertain sum, whether by way of remuneration for personal labour, or as interest upon borrowed capital, which was to depend upon the amount of the gains made in a particular trade or business by another person, constituted the first person a partner with the second, and rendered him liable to the full extent with the second person for all the losses which might be incurred in such trade or business, the only exception appearing to be in favour of servants paid by a certain share of the gross profits. (*Dry v. Boswell*, 1 Camp. 329). The rule seems to have been founded on decisions of Lord Mansfield, in *Young v. Astell* (2 H. Bl. 242) and *Hoare v. Dawes* (1 Dougl. 372), the principal reason given in *Hoare v. Dawes* being, that "otherwise dormant partners would receive usurious interest without any risk"—a reason which, though valid at that time, has been effectually extinguished by the repeal of the usury laws. The rule met with great favour, and was very firmly established by a series of decisions for many years. Later, however, the current seems to have turned, the decisions tending to run the other way; and the doctrines established by the recent case of *Cox v. Hickman* (8 H. L. C. 268; 7 Jur., N.S., part 1, p. 105) have to some extent remedied the evils of this old doctrine. The facts of that case were briefly these:—Messrs. S., being in difficulties, conveyed all their property to trustees, upon trust to carry on the trade, and to divide the net income between the creditors rateably, such income nevertheless, being deemed the property of Messrs. S. Full powers of management were given to the trustees, and the creditors had power to vary the trusts, and wind up the business. It was held, that the creditors were not liable upon the engagements of the trustees, the ground of the decision being that the trustees were agents, not for the creditors, but for Messrs. S. In the judgments delivered by the Lords in this case it was laid down that the true test in all questions of liability between persons entitled to shares in the profits of any transaction is, whether the persons carrying on the business are agents for those claiming a share in the profits. Where a creditor, in order to secure payment of his debt, joins his debtors in a trading transaction, from the profits of which he is to be paid, then, according to the decision in *Kilshaw v. Jukes* (9 Jur., N.S., part 1, p. 1231), there is no partnership, for the debtors are the persons primarily interested, although, of course, the creditor becomes liable if his name is published to the world. The only question in such cases will therefore be, was the person claiming a share in the profits in the position of principal with respect to the managing partners? In other words, members of a firm being regarded as agents for one another, was the business primarily carried on for the benefit of the person claiming the share of profits as much as for that of the other partners? The question is chiefly important as affecting the interests of dormant partners. There can be no question as to the liability of a dormant partner who claims the right of interference in the partnership concerns, but he would not, it is conceived, be liable if he is not possessed of this right. It may then be asked, how, as the law now stands, can a person possessing capital invest it in any concern (other than a limited company) without incurring the liability of a partner? I submit that the desired end may be accomplished by a stipulation that the advance shall be for a time certain, during which the person lending shall have no power to call in his money or to interfere in the management of the business; in fact, by lending his money as upon a mortgage, and receiving a share of profits instead of a fixed rate of interest. No question of agency can arise in such a case. The lending

party may receive a good dividend, or nothing; he may receive back his principal untouched, or he may lose every farthing of it. These are the risks of trade, incident to all speculative transactions. But if my view of the legitimate results of the decision in *Cox v. Hickman* be correct, he may always rest assured that he knows the worst that can happen to him, and that no unascertained claims, involving perhaps the loss of his whole estate, are hanging over him; and if so, the decision in *Cox v. Hickman* will have conferred an immense benefit upon the trading community. The time has, however, come when the imperative claims of complicated and ever-increasing commercial relations demand that the law of partnership shall not be left to be gathered from conflicting decisions of courts of law and equity, but shall be laid down by the Legislature in plain and broad terms, intelligible in principle, and of ready application. The mercantile world will do well to intrust the arduous task of bringing about this desired result to the able hands which introduced the bill to amend the law of partnership in the last session of Parliament.

A. W. L.

Review.

Handy-Book on Life Assurance Law, for the Use of Policy-holders and Agents, with a Preliminary Statement of some Amendments that are desirable. By ARTHUR SCRATCHLEY, M.A., Barrister-at-Law; formerly Fellow and Sadlerian Lecturer of Queen's College, Cambridge; Actuary to the Western Life Assurance Society, &c. 1864. [Stevens, Sons, & Haynes.]

IN the small compass of thirty-five pages, Mr. Scratchley has digested nearly 200 cases relating to life assurance, and placed them under their respective heads in alphabetical order. Although intended for the non-professional reader, there is little doubt of its proving useful to the lawyer, while its popular element, cheapness, will not be objected to by either party. Mr. Scratchley has in view the amendment of the law, as it bears upon life assurance generally, and has embodied his proposed reforms in the draft of a bill, which we will give entire, and refer the reader to the *Handy-Book* itself for the author's comments.

A DRAFT OF BILL

For enabling Policies of Life Assurance to be specially secured for the Widow and Children of an Assurer by Nomination, without the Necessity of a Trust Deed, and for rendering Policies of Assurance assignable at Law by simple Indorsement.

Whereas it is expedient to extend the advantages of settlements of policies of assurance on lives to persons who are now unable to enjoy those advantages, by reason of the expense of settlements, and the difficulty of procuring trustees;

And whereas the full development of the advantages of life assurance has hitherto been checked by legal impediments to the assignment of life policies, and it is desirable that such policies should be rendered more valuable as commercial securities, by facilitating their assignment; be it therefore enacted &c., as follows:—

Sect. 1. Any person who, before the passing of this act, has effected or thereafter effects a policy of assurance upon his own life or upon any contingency capable of being lawfully provided for by life assurance, with any society for the assurance of lives established in Great Britain or Ireland, may, by writing under his hand indorsed upon such policy, nominate his then

wife, or any one or more of his descendants then living, to receive the moneys payable under such policy, or any part thereof specified in such writing, either severally or as joint tenants, or by way of succession, in the event whereon the same will become payable.

2. Every such writing shall describe the person thereby nominated, if the wife of the nominor, by her Christian name, and if a descendant of the nominor, by his Christian and surname, with the date of his birth.

3. Upon making any such nomination, the nominor shall produce the policy whereon the same is made to any officer of the society liable to pay such policy, authorised to acknowledge nominations on its behalf, and shall at the same time deliver a statement in writing under his hand containing a copy of the nomination, and thereupon an officer shall sign an acknowledgment of such nomination in the form contained in the schedule hereto, and the date of such acknowledgment shall be the date of the nomination hereinafter referred to.

4. The receipt of any person nominated by an indorsement so made and acknowledged, shall be an effectual discharge for the sum payable to him in virtue of such nomination to the society making such payment, against any claim on the part of the executors, administrators, or assignees of the nominor, except in the cases hereinafter provided.

5. A nomination under this act shall be void, and the sum payable thereunder shall form part of the general estate of the nominor:—

- (1). If the nominor becomes bankrupt within twelve calendar months after the date of the nomination;
- (2). If the nominee dies before the nominor, and the nominor does not exercise the right of substitution hereby given.

6. A nomination under this act shall be void as against any assignment of the policy whereby it is secured, or any covenant or trust affecting the same, made or declared before the date of such nomination, and whereof notice has been previously given to the society wherewith such policy is effected.

7. The sum payable on any nomination under this act shall be chargeable with the debts of the nominor existing at the date thereof, if the nominor dies within twelve calendar months after the date of the nomination leaving any such debts then unpaid, and not provided for by his other assets, and if notice thereof is given to the society with which the policy is effected within three calendar months after his decease by his creditors, executors, or administrators.

8. No payment shall be made on a nomination by any person who dies within twelve calendar months after the date thereof, until the expiration of three calendar months after notice of his death has been given to the society with which the policy is effected; and if in this interval the society receives notice of any such debts as aforesaid existing unpaid, it shall retain the moneys due under such nomination until the amount thereof applicable in payment of such debts is established by evidence satisfactory to its directors, or by the judgment of a court of competent jurisdiction, and shall pay over such amount to the executors or administrators of the nominor, or otherwise as such court orders.

9. Subject as aforesaid, the sum included in any nomination, or the surplus thereof after the discharge of any debts affecting the same, shall be duly paid by the society, according to the provisions of the nomination.

10. The legal representatives of a nominee who dies after the happening of the contingency whereon the

policy depends, but before payment, shall be entitled to receive and give valid discharges for any sum which would have been payable to the nominee under the nomination if he had been alive.

11. Nominations made under this act cannot be revoked in favour of the nominor, but, in the case of the death of any nominee, the nominor may substitute in place of the nominee so dying any other person whom, under the provisions hereof, he might then originally nominate; and in the case of nominations in favour of descendants, the nominor may, from time to time, substitute or add the names of any other such descendants as the nominees solely or jointly with the descendants previously nominated, of the moneys affected by such nomination, so that all such substitutions or additions be made in like manner as original nominations.

12. The payment of premiums due upon a policy subject to a nomination under this act, by any person other than the nominor, shall not affect the rights of any nominee to the moneys thereby secured, and such rights shall be incapable of assignment either at law or in equity before the happening of the contingency whereby they become vested, unless in the case next following.

13. If a nominor become bankrupt after the expiration of twelve calendar months from the date of the nomination, the society, by which the policy is payable, may at any time thereafter accept the surrender of the policy, by the nominee if of full age, or by his guardian, and pay to him, or rateably between the nominees if more than one, the saleable value of such policy, or if the nomination does not extend to the whole of the moneys secured thereby, then a proportionate part thereof.

14. If the power of nomination hereby given has been exercised as to part only of the sum secured by any policy, the society by which the same is payable may, at any time, accept a surrender of such proportion of the said sum as is not included in the nomination, and may cancel such policy by issuing a new policy at the same rates of premium for the proportion thereof so included, subject to a like nomination in favour of the parties entitled under the nomination so cancelled.

15. In any nomination made under this act there may be inserted, with the consent of the society by which the policy securing the same is payable, testified as its regulations require, a provision that, if any nominee should be under the age of twenty-one years at the happening of the contingency whereon the sum assured becomes payable, the society liable for such policy shall retain the sum to which such nominee is entitled until he attains such age, or until his death under it, allowing interest thereon at such rate, and payable in such manner, as is stated in such provision; and all such provisions shall be binding upon the society and the nominees respectively.

16. In a nomination carrying interest, the nominor may, by a declaration inserted therein, make the receipt of any nominee at any age not under fourteen years a good discharge for such interest, and where no other provision is made by the nominor for the payment of the interest due to any nominee during his infancy, the same shall be payable, as it accrues, to his lawful guardian, whose receipt shall be a good discharge therefrom.

17. Every assurance society which admits the death of any person upon whose life a policy of assurance affected by a nomination under this act depends, shall, within one calendar month thereafter, give notice of such admission to the Commissioners of the Inland Revenue; and shall, out of the sum payable on such nomination, retain an amount sufficient, in the judg-

ment of its directors, to provide for the probate and legacy duty assessable thereon under the provisions of this act, and shall not part with the amount so retained, or any part thereof, until such duties are paid, except in payment of such duties; and if any such society make any payment in contravention of this provision, it shall be liable, at the suit of the said commissioners, to pay double the sum chargeable for such duties.

18. For the purpose of ascertaining the sum chargeable as last aforesaid, the Commissioners of the Inland Revenue shall, upon the application of any nominee under this act, assess the amount which would be payable for probate and legacy duty upon the sum secured to him by the nomination if such sum constituted the whole estate of the nominor chargeable with such duties, and shall issue to him a certificate of the amount so assessed in such form as they from time to time direct.

19. Any society for the assurance of lives established in Great Britain or Ireland, may authorise any of its officers in case an assignment, duly stamped, of any policy for which such society is liable, is produced to him, together with the policy and a statement in writing containing the names and descriptions of the assignor and assignee, and the date of the assignment, to indorse thereon under his hand an acknowledgment of such assignment.

20. Such an assignment as last aforesaid may be made by an indorsement duly stamped on the policy assigned, in the form of assignment contained in the schedule hereto, which shall vest in the assignee all the rights, legal or equitable, of the assignor in such policy at the date hereof, and may be stamped by affixing stamps thereto in like manner as to policies of assurance.

21. An assignment of any policy not indorsed upon the policy, shall be acknowledged in the first form of acknowledgment contained in the schedule hereto; and an assignment thereof so indorsed shall be acknowledged in the second form of acknowledgment so contained.

22. From the date of any such acknowledgment, the assignee therein mentioned or referred to, his executors or administrators, may sue on the policy assigned, and give effectual discharges for any moneys payable thereunder, and not comprised in any nomination made under the power hereby given, without joinder of the executors or administrators of the assurer.

23. The statements hereby required to be delivered on the acknowledgment of any nomination or assignment, shall be the property of the society on behalf of which the acknowledgment is made, which may charge for such any acknowledgment a fee not exceeding 5s.

24. This act may be cited as "The Life Assurance Act, 18—."

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THE JURIST.

LONDON, AUGUST 20, 1864.

THE case of *Bale v. Cleland and Others*, which came on for trial at the last Guildford Assizes, and was arranged between the parties on the third day of the trial, should afford instruction and warning to the promoters, directors, and shareholders of joint-stock companies. We have no intention of discussing the conduct of the defendants in this particular case, and are quite ready to assume that there was no fraudulent intention on their part, and that the arrangement made between them and the plaintiff was a matter of mutual concession; but although the charge of fraud was withdrawn, it is clear that there was a breach of duty on the part of the directors, and, therefore, that the facts which constituted that breach of duty should be carefully weighed and considered by others who are in the same position. Now, it appeared upon the evidence given at the trial, that the directors had issued a prospectus and a balance-sheet, on the faith of which the plaintiff applied for and paid for his shares. There was a contention between the parties as to the reasonable construction of the prospectus, the plaintiff contending that it represented the actual business which had been done by the company, the defendants, on the other hand, contending that it represented what the company's works were capable of doing, and might be fairly expected to realise. After considering the prospectus, which was set out in the public prints, we must think that any reasonable man would have put the plaintiff's construction upon it, and, therefore, that he was justified in believing that it represented the work which had actually been done; thus, the prospectus amounted to a misrepresentation, and if the case had gone to the jury, the question would have been, whether the defendants knew it was a misrepresentation. We think it may be taken for granted that the jury would have found against the defendants, for they would naturally have the strong impression that persons who publish these documents ought to know, and must be taken to know, whether they are true or false. So far, therefore, as the prospectus is concerned, the case is a warning to directors to state truly and accurately in such a document, all those facts which are put forward, with the view of explaining the real state of the company's affairs, and to use language, the fair meaning of which cannot be open to doubt and discussion.

The other document, on the inaccuracy of which the plaintiff relied, was the balance-sheet sent to the shareholders shortly before the yearly general meeting. It appeared that the auditors differed as to the principle upon which the balance-sheet should be drawn up: according to the opinion of one, it ought to shew a loss, according to that of the other, it ought to shew a profit. No doubt, other graver charges were introduced into the case, but as the charge of fraud was abandoned, we shall consider that there was a bona fide difference of opinion between the auditors. At

the meeting of the shareholders the difference of opinion was fully explained, and the two balance-sheets put before them; and the directors stated to the shareholders that it was entirely for them to decide what balance-sheet they would adopt, and whether a dividend should be declared. The shareholders, not unnaturally, believed the balance-sheet which shewed a profit, and accordingly declared a dividend. The plaintiff swore, that on the faith of this dividend and the prospectus, he took his shares.

Now, the Joint-stock Companies Act, under which the company was formed (19 & 20 Vict. c. 47, table B.), contains the following direction as to dividends:—

"The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

"No dividends shall be payable except out of the profits arising from the business of the company."

Now, these provisions shew—first, that it is the directors who are to declare a dividend, and that they cannot escape responsibility by leaving the matter entirely in the discretion of the shareholders; and, secondly, that they ought to be quite satisfied that there are profits out of which to declare it; and that if, as in the case of *Bale v. Cleland*, there is a substantial difference of opinion on the point, they ought not to declare a dividend. In *Bale v. Cleland* it appeared that the directors themselves differed in opinion as to the propriety of declaring one; and it is clear that the shareholders could form no satisfactory opinion unless all the accounts were before them, and they had had ample time to look into the matter. At all events, a committee of shareholders should have been appointed to examine the books, and hear the statements of the auditors before they pronounced their decision. Baron Martin, at the close of the case, expressed himself in the following strong and judicious observations on the point:—"I wish to make a few observations. I do not desire to make any comments on the case, but I desire it to be distinctly understood that I do not concur in certain of the observations which have been made by the defendants' counsel. I see a great many of these companies in course of formation, and I strongly recommend persons disposed to take shares in them to read carefully the report of the proceedings of this trial. In the second place, I desire to say that the law directs that the directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares, and that no dividend shall be payable except out of the profits arising from the business of the company, and, therefore, it is the bounden duty of the directors (indeed, I do not believe that the shareholders could legally make a dividend, for it is the directors who are to make it), it is the bounden duty of the directors, when they declare a dividend, not to pay it, except out of profits; and if a dividend is declared otherwise than out of profits, it is their duty to resist it and refuse to pay it, and, if necessary, to appeal to the Court of Chancery to restrain its payment."

Another point which should be noticed by directors of companies is, that Mr. Bale was not a shareholder when he saw the prospectus and balance-sheet, and

that those documents, especially the latter, were intended for shareholders; but any doubt as to this fact not relieving directors from liability, has already been removed by the case of *Scott v. Dixon* (29 L. J., Ex., 62, note), a case very similar to that of *Bale v. Cleland*, where the question was raised, and where Lord Campbell thus expresses himself:—"The next point which we have to consider is, was the representation made to the plaintiffs? Upon that I cannot entertain the slightest doubt. Report of joint-stock companies, though addressed to the shareholders, are generally meant for the information of all who are likely to have dealings with the company, and I have no doubt that the directors in the present case knew that this particular report would, a few hours after its publication, be in the hands of all shareholders in Liverpool, and that it would be acted upon by those who wished to have dealings with the bank. But, moreover, we have positive evidence here that it was to be bought by any person who wished to become a purchaser of shares, and it thus came into the hands of the plaintiffs; and the plaintiffs, by the perusal of it, were induced to buy shares."

It is thus clear that any one of the public who sees these documents, and take shares upon the faith of them, has a claim upon the directors, if he is injured by their containing false statements, to the knowledge of the directors.

Another warning which the case of *Bale v. Cleland* holds out is, that gentlemen of fortune who become directors without the intention of making themselves acquainted with the condition of the company or the proceedings of the acting directors, incur a great risk. It is true, that in *Bale v. Cleland* the counsel for the plaintiff gave up the case as to three of the defendants, who were men of fortune, and had taken no active part. After reading all the evidence, we most doubt whether the judge or jury would have been of this opinion. Such gentlemen lend the weight of their names and character to the company; they have the means of knowing the truth or falsity of any statements which are published by the other directors, and they cannot and ought not to escape responsibility by not using those means of knowledge.

In conclusion, we most earnestly, in the words of Baron Martin, recommend persons disposed to take shares in joint-stock companies to read carefully the report of the trial of *Bale v. Cleland*.

APPORTIONMENT.

(Concluded from p. 317).

THERE are various cases in which courts of equity decree apportionment of payments not falling within the common-law rules or the statutory provisions, as, for example, where a certain aggregate sum is paid in lieu of or by way of composition for periodical payments. When a composition in respect of periodical payments, some of which accrued due before the death of a tenant for life, is received by the reversioner or person entitled in succession, it will be apportioned according to the time which has elapsed since the death of the tenant for life. Thus, in the case of *Agnesley v. Wordsworth* (2 Ves. & B. 331), a compo-

sition in lieu of tithes was received after the death of the incumbent by the successor; it was decreed that the payment should be apportioned between the successor and the representatives of the incumbent, according to the respective periods of their enjoyment of the benefice. See also *Oldham v. Hubbard* (2 Y. & C. C. C. 209), in which Vice-Chancellor Knight Bruce expressed an opinion that a composition for tithes is within the Apportionment Acts of Geo. 2 and Will. 4. Where leaseholds in settlement were taken by a railway company, and the purchase money paid into court, the purchase money was divided according to the number of years in the term unexpired at the time when the company took the lands, and a portion corresponding to the number of years that the tenant for life held, was paid to his representatives, and the residue to those entitled in remainder. (*Re Money's Trusts*, 2 Drew. & S. 94). But if the time during which the payments accrued is uncertain, it would appear that there will be no apportionment. Thus, in *Hartley v. Allen* (4 Jur., N. S., part 1, p. 500) a dividend, declared shortly after the death of a tenant for life, was apportioned, but it was held, that a bonus, though payable at the same time with the dividend, could not be apportioned. It is conceived that the decision was grounded upon the fact, that in the case of the bonus there was nothing to shew that it had not been declared in respect of profits made since the death of the tenant for life.

There is a very numerous class of cases where contribution is sought from the reversioner towards payments made by the tenant for life, for the benefit of or in discharge of both. Thus, when leaseholds or copyholds are settled, and no provision is made for the expense of renewal, if the tenant for life renews, he will have a lien upon the estate in the hands of the reversioner for a portion of the expense corresponding to the number of years of the renewed term, of which he has not had the enjoyment. If the remainderman renews, he may require the tenant for life to give security for the amount which, at the determination of the life interest, shall appear to be his due proportion of the fine. (*Jones v. Jones*, 5 Har. 440). The rule is the same for legal and equitable estates. (*Carter v. Sebright*, 26 Beav. 374). As the amount to be borne by each is to be determined in proportion to their actual enjoyment of the estate, and not in proportion to an extent of enjoyment to be determined speculatively, or by a calculation of probabilities, there can be no apportionment till the death of the tenant for life. (*Harris v. Harris*, 10 Weekly Rep. 826; S. C., 12 Weekly Rep. 451).

The rule that burdens, to which several persons are jointly liable, shall be adjusted between them, may be regarded as an application of the old maxim, that equality is equity. Thus, where one of several co-sureties discharges the debt, he may exact contribution from the others (*Dering v. The Earl of Winchelsea*, 1 Wh. & Tud. L. C., Eq., 78); and where an estate subject to a rent-charge, is sold in parcels, the purchasers must, in the absence of any stipulation, contribute rateably to the rent, and if an undue proportion be paid by one, he may recover the excess from the rest. (Cary's Rep. 3).

There is an exception to this rule in cases where the payment towards which contribution is sought, was made in a matter arising ex delicto. On the principle that he who comes into equity must come with clean hands, the Courts refuse to interfere where a liability which has arisen from the wrongful act of several parties, has been discharged by one of them. Each of the parties at fault, is in such a case, liable at law for the whole consequences of their joint act, and equity will give no relief by apportioning the losses between

them. (*The Attorney-General v. Wilson*, Cr. & Ph. 1; and see *Lingard v. Bromley*, 1 Ves. & B. 117; and *Siddons v. Connell*, 10 Sim. 86).

The subject of contribution in equity is fully discussed in a learned note to *Averall v. Wade* (Lloyd & G., temp. Segd., 252, 264), where many cases on the subject are collected, and to which reference is made for further illustrations of the principles stated above.

COPY OF LORD ST. LEONARDS' ANSWER TO THE CIRCULAR ISSUED BY THE BAR COMMITTEE, ON LAW REPORTING.

THE present scheme of reporting has the advantage of furnishing the profession with an immediate report of every case of any importance, with, no doubt, the unavoidable drawback of the want of time for the reporter to obtain the briefs and papers in the cases, and to give them that study and deliberation which the subject demands; but this is supplied by the regular reporter, to whom ample time is allowed, and from whom an accurate and condensed statement of facts is required. Open to objection as the scheme may be, the bar, I think, would not be willing to lose either the earlier or the later reporter. There is such a demand for the last authority, that now and then it is not the greatest lawyer, but the one who has read up the latest cases who proves the best advocate.

By our law, every decision after a regular argument is an authority, for our decisions are not like those of the French, good only for the successful party, but they operate as precedents, and will, unless erroneous, be followed. This system works admirably, although, of course, there will always be judgments open to objection.

I have not experienced any difficulty in consequence of differences between the reports. The weekly ones, which are ably conducted, would not be relied upon in an important case, if any doubt arose about the facts, but the briefs in such recent cases could always be readily obtained, and the facts be ascertained before publication of the report in full.

I should think it objectionable to call for legislative interference, or to attempt to place reporters under the Government, or to appoint short-hand writers. You can no longer prohibit, or control by the strong hand, reporting. Every man is and must be left at liberty to go into court and report what he pleases. The newspaper press has, and will continue to have, that privilege. No judge could properly refuse to hear a case quoted by the bar, but a judge would not, upon a law point, allow a newspaper report to be quoted, nor would he act upon an important decision quoted from a report hastily published; without further examination. When the regular report is published, after the reporter has had full time to obtain and read the briefs, and to consider the facts, the Court can safely act, for if there be any error in such a report, it is quickly detected.

We have excellent materials to proceed upon. There are, perhaps, too many weekly reporters, but not too many of those I term the regular reports. The first you cannot interfere with further than this, that the Court may, and the authority has frequently been exercised, refuse to allow a weekly reporter to be quoted, when the case is published in the regular report. If the former are or should become too numerous, that is an evil which should be left to cure itself. Unless the sale is satisfactory, the publication will necessarily cease. One evil of numerous reporters is, that cases, however unimportant, are reported, for every reporter is naturally desirous to secure the inser-

tion of his own report of a case which will not be found in any of the other reports.

But the regular reports are no doubt open to some objection. Many cases depending upon local acts, which are not likely ever again to come into discussion, are reported at great length; so cases, for example, depending upon the construction of a long correspondence, can hardly be usefully reported, unless the judge lays down or explains a rule of law. It would be useless to multiply instances. A judge may with great propriety go at large into an examination of the facts, for the satisfaction of the suitor, which it may not be necessary to report at length, although, no doubt, the Court frequently, in its own view of the facts, clears up half the difficulties in the case. It is impossible not to be struck with the learning and labour exhibited by our judges in their judgments; but the length now and then is greater than the case, as a legal authority, would justify the reporter in fully reporting.

But these things can be easily corrected, and it would be desirable that one uniform plan of printing should be adopted. No number should close with part of a case; such a mode of reporting gives the student and the practitioner additional trouble, and has the appearance of an attempt to compel the purchaser of the mutilated report to purchase the next number, and so through the series.

Some of the regular reporters have felt themselves at liberty to leave portions of their earlier cases unreported for a considerable time, whilst they report the current cases. This is, of course, open to serious objections.

Law reports have always been costly, but until of late years they were of considerable value when on our shelves. Now, however, the booksellers have so managed, that after the lawyer has half bound his reports, he finds their value in his hands not largely exceeding the cost of the binding. There should, therefore, be no reports of unnecessary length, or of points not of importance. With the bookseller it is, of course, merely a trade transaction, so that the reporters may, in carrying out their improvements, require, in some measure, the support of the bar and the bench. The profession owe a debt of gratitude to those members of the bar who, with knowledge, ability, and labour, dedicate themselves to reporting; and in dispensing legal patronage, long-continued labours of a reporter should not be overlooked.

Although I am opposed to legislative authority or an undue control over reporters, yet I think much may be done by the bench and the bar to place reporting on a more satisfactory footing. The judges cannot be required to write their judgments; that must be left to their own discretion. Where the judge corrects the report of his judgments, he would, of course, avoid altering the sense of what fell from him, and he should not detain the MS. an hour longer than necessary, for that would tend to delay the publication, and thus an impediment would be caused by the bench itself in the accomplishment of the object in view. The reporter should not be under or subject to the judge, but he should be in confidential communication with the judge. There has always, in my time, been an acknowledged reporter, that is, a reporter in whom the judge reposed confidence, and to whom he allowed a copy of his written judgments to be furnished, and in many instances the judge corrected the MS. report. This operated as a check upon rival reporters in the same court; but if I recollect rightly, Lord Denman, when chief justice, broke through the rule; and whilst there were rival reporters in the King's Bench, allowed both to have copies of the written judgments. It is not probable that there will hereafter be more than

one report of the proceedings of each Court. Although the judge has no power to appoint a reporter, he has necessarily considerable influence over the assumption of the office by any gentleman at the bar. There is no want of competent persons to fill the office, but no man could hope to succeed who did not possess the confidence of both the judge and the bar, and no bookseller would undertake the publishing the reports unless he were satisfied that the reporter did possess that confidence. I believe that what is now passing will go far to correct any solid objection to the present mode of reporting; and as the bar has taken up the subject with general approbation, I would beg to suggest, that besides the report, which I presume the committee will make embodying their views, the bar should establish from their own body a permanent committee, a sort of family council, with power to add new members as occasion may require, whose duty it should be to keep a friendly eye over the reports, and to suggest such improvements as may in their judgments be required, and to communicate with the bench and the reporters thereon, and, if it should be deemed necessary, to call a general meeting of the bar. The simple appointment of such a body would in all probability prevent any irregularity in the reporting of the judicial decisions. If any occurred they could speedily be corrected; and it would be understood that this power, if I may so term it, would be so exercised as in no respect to wound the feelings of the highly honourable and learned class of our brethren at the bar, who dedicate their time to reporting the decisions of our Courts.

I may observe, that I consider any attempt to purchase the interests in any existing reports altogether inadmissible, nor do I think that any satisfactory arrangement is likely to be made between the large body of the reporters in the various Courts.

Connected with this subject there are two important questions upon which the opinion of the bar must have great influence. 1. What are we to do with the reports already published? 2. What are we to do with the future reports after their publication? My answer to both these questions would be, do nothing, but leave both classes to be sold to all desirous of purchasing.

1. As to the first class, I should consider it a waste of time and money to touch them. No good law library is without them, and although at one time they were dear, yet now they are cheap, and a sufficient stock is always in the market. To republish them as they are would cost a very large sum; no bookseller would undertake it, and it would be a waste of public money. Any man who wants an old report which is not on his own shelves, is sure to find it in the library of his inn. If an attempt were made to curtail and consolidate these reports, it would be an expensive and a useless labour. No bookseller would undertake any such publication, and who, having already the old reports at large with all the arguments, would buy the curtailed edition? Speaking for myself, I have constantly found the arguments in the old reports a great help to me during my long career. Who would venture to condense Coke or Plowden, for example? Besides, if we require condensation, can we hope to excel Chief Baron Comyns; or, if we look for an enlarged view, can we compete with Chief Baron Gilbert (part of Bacon's Abr.); whilst, if we call for an abridgement, have we not Viner's, in 24 folio volumes, besides a modern Appendix of 6 octavo volumes, and other works of great merit. And, not to be serious for a moment, if we prefer verse to prose, we have all Coke's reports condensed in verse, e. g.

Archer,—If he for life enfeoff in fee,
It bars remainders in contingency.

2. As to the suggestion, that periodically the future reports should be consolidated and corrected, we must bear in mind that we shall at a large cost already have the reports themselves on our shelves, and, as I have already reminded you, of little pecuniary value relatively to their cost. A mere republication of the reports under separate heads would be very expensive, and would not sell; and if you desire to go further, to whom would you intrust the important task of omitting this case and throwing doubts upon that? Where is the man to be found? And by what power is such an authority to be granted? For, unless it be stamped with authority, it would simply rank amongst the legal publications of the day; and, even if made authority, the bar would be at perfect liberty to resort when necessary to the original report, and perhaps damage the improved version of it. A code of law founded on the reports every five or six years would be no benefit. In truth, in the many excellent treatises which, at least in sufficient numbers, now issue from the press, we have upon all important subjects codes and codes, resting altogether on the knowledge and labour of their authors. They are not law, but they undertake to consolidate and explain the law upon the particular subjects which they discuss, and for which purpose all the reports, ancient as well as modern, are resorted to. Such treatises, with such corrections as the Legislature only can make, and which can seldom be well directed, unless a comprehensive view can be readily taken of the whole subject, tend to place the law on a just foundation. The authorities are not likely to harmonise unless they are collected and the entire subject considered. It is then that the discrepancies and departures from principle are for the first time observed. In such works discussion, and, it may be, respectful disapprobation, may be allowed, for their observations can only become law by force of their own weight, which may lead to their adoption by the learned judges. Happily they are not law, but such works have more than the advantages which can be offered by an authorised code, which is to be binding upon as law. It would seem to be wise, therefore, not to attempt to condense, correct, and consolidate the reports, ancient or modern.

ST. LEONARD.

THE NEW CIVIL CODE FOR INDIA.

(From the Saturday Review.)

A SMALL beginning of a very great work—a work which, if completed and carried out with foresight and ability, will do more than any other one thing, to make British rule a blessing to India—has been made by the publication of the first Report of the Commission appointed to prepare a body of substantive law for India. The commissioners at present only attempt to frame a body of civil law for persons not belonging to the Mahomedan or Hindoo religion. They do not venture to alter the rules of descent under which the forefathers of the vast majority of the inhabitants of India held and transmitted land while Britain was still an island undiscovered by civilised man. They do not even shake the edifice of more modern subtleties, complicated by an imperfect system of arithmetical notation which has been built up by the patient but narrow genius of Mahomedan lawyers. The laws of his fathers are still to be the laws of the ryot, and the owner of a vested share in a Mahomedan inheritance will still have to arrive at the simple result he desires by calculating what is the two-thousandth or three-thousandth part of a purely artificial total. It is for Armenians and Parsees, for the descendants of Euro-

peans, and far Europeans settled in India, that the new laws are to be framed. They most want a law, for they have no law at present. The barbarous and accidental character of English law and English legislation could scarcely be better illustrated than by the fact that these persons are theoretically supposed to be under the common law of England as it stood a hundred years ago; or, if they are remote from the regions where a knowledge of English law is professed, they are subject to the decision of judges, whose best quality is their frank honesty; and who profess to be guided by nothing better than the wavering light of their own good sense. The commissioners have had to consider how far the principles of English law in each branch of the civil code is applicable to persons placed as these outlying inhabitants of India are placed, and then how far these principles are in themselves capable of improvement. If their task is well performed, and if the civil code, when in operation, is administered by able and competent judges, the great hope for the future which the commissioners express may be realised, and the Hindoos and Mahomedans may be willing to make the new law their law, and so there will be only one legal system throughout British India. No instrument of education and of civilisation after the European pattern could be more efficacious than a uniform code of law, and none could be more certain to mould the thoughts of all the natives of India into a patient and contented acceptance of British rule. It is impossible also that the success of an Indian civil code should not in time modify profoundly the existing law of England. Rules of law to which tradition and custom make us now adhere with a blind reverence will appear in a very different light when they have first been stigmatised by persons of high legal eminence as being in themselves useless or hurtful, and when they have subsequently been shewn to be needless by the practical experience of India.

The branch of law which the commissioners have begun comprises the rules of succession and inheritance. They have not judged it advisable that the rules for the devolution of moveable property should be, as in England, different from the rules for the devolution of immoveable property. The English, they observe, who hold land in India, look upon it as a temporary investment, and none of the other inhabitants of India recognise the distinction with which feudal law has made us familiar. The interests of women are to be better protected than in England. It is proposed that the husband shall not acquire by the mere fact of marriage any interest in his wife's property during her life, but that she shall continue to possess the same rights with reference to it as if she were unmarried, and shall have full power to dispose of it by will. When the commissioners proceed to notice some of the more intricate details of the law of succession, they propose variations from the English law which shew how objectionable they think the English law of testate and intestate succession in many respects, and how far it has been made to depart from that which they say has been their aim—the giving effect to the plain meaning of the words of the testator, without endeavouring to do or say for him that which he has not done or said for himself. On the subject of conditions, for example, they say that they have considered it right to abstain from introducing into India the very refined distinctions which the Court of Chancery has, in questions relating to personal property, borrowed from the Ecclesiastical Courts. It sounds like a gentle ridicule of Chancery law when they go on to explain their meaning, and to add that they think the words of a will ought to be adhered to where no condition inconsistent with law or morality

is sought to be imposed; that all bequests made upon illegal, immoral, or impossible conditions, should be void; and that wherever the testator's wishes can be carried into effect if expressed in one way, they ought to be permitted to take effect if expressed in another way. The commissioners have also introduced a valuable reform in the complicated and uncertain rules governing the acquisition of domicile, by providing that no one shall acquire a domicile in India by residing there as a soldier in the Queen's service, or in the discharge of any public office, or in the exercise of any profession or calling. This, with regard to the bulk of the army, is only stating the law as it stands; but it will prevent the official and professional classes, and the officers of the staff corps, from acquiring, as they may do now, an Indian domicile, often without their knowledge, or even against their will. But a means is provided by which any one distinctly wishing for an Indian domicile may acquire one, and thus all uncertainty will be avoided, and every one will know whether he has an Indian domicile or not.

The masterly code of criminal law which India owes mainly to Lord Macaulay supplied the commissioners with many admirable hints for working out the details of their scheme. More especially, they have borrowed from it the ingenious machinery by which it is sought to obviate the danger of the code being rendered useless by the interpretations of judges. This machinery consists of two parts. In the first place, each provision of the code is accompanied by illustrations. Cases are put in which the clause of the code is applied, and it is shewn how such a case is to be decided. The framers of the penal code explained that it was their object to select examples which shewed how far the words of the clause could be carried—cases which, so to speak, strained the words of the clause to their just limit, and thus gave a measure of their capacity. An obvious instance would illustrate nothing, for it would solve no doubts; an instance seemingly beyond the words of the code would only cast doubts on the value of the language used. The really instructive illustration is an illustration which anticipates the classes of cases which judges would be likely to find difficult, and then shews what is the decision that ought to be given. This difficult task was fulfilled with the greatest ability and judgment in the construction of the penal code, and the framers of the civil code have not only adopted the same method, but have laid down, that the cases taken as illustrations shall be binding as law on the judges if they arise. This might seem a useless provision; for it is impossible to suppose that, if the precise case anticipated arose, a judge would venture to decide it in a manner different from that in which the framers of the code had themselves decided it. But the absolute legal value given in the civil code to these illustrations is really connected not so much with the illustrations themselves as with the part they are to play in the gradual improvement of the law. The commissioners are determined, if possible, to save India the burthen of having piles of judicial decisions overlaying the words of the code. So they adopt the second part of the machinery invented by the authors of the penal code, and provide that every judge of any but the lowest rank shall report to his official superiors every doubt he may entertain as to any question of construction; and the statement of these doubts, together with every decision conflicting with the decision of another judge, are to be reported on, and the reports sent home to the Secretary of State for India, and laid before his legal advisers, who will see how far the code ought to be altered, and, still more, what additional or substitutive illustrations ought to be made. Instead, therefore, of new law being made by judges

in India, it will be made by the legislative power, in the shape of a new illustration. This use of illustrations to embody the essence of all the legal subtleties and difficulties which practical experience may have suggested to judges, is one of the greatest triumphs of the new legislation for India; and if the whole system is as well framed and worked as there is reason to hope it will be, India will probably have in a few years one of the very best legal systems that the world has ever seen.

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THE JURIST.

LONDON, AUGUST 27, 1864.

THE case of *Bramwell v. Eglinton*, lately decided by the Queen's Bench, and reported 10 Jur., N. S., part 1, p. 583, has not, we think, attracted the attention it deserves. The main point of the decision may be shortly stated to be, that the title of the assignees of a pauper bankrupt, who has been a prisoner for debt, relates back to the first day of his imprisonment; and we propose to consider whether this decision was correct, and if correct, whether the clauses of the new Bankruptcy Act, on which it professes to be founded, are the result of inadvertence on the part of its framers, or indicate on their part an intentional retrogression from the principles on which bankruptcy legislation has been administered on this subject for many years. It will, therefore, be convenient to glance shortly at the history and progress of this branch of the law, and to ascertain how it stood at the time of the passing of the Bankruptcy Act of 1861. The relation of the title of assignees in bankruptcy back to the act of bankruptcy, although necessary, had been formerly supposed to operate with so much harshness as to require mitigation or modification in particular instances.

The doctrine of relation was itself a creature of statute, as is shewn by Lord Mansfield in *Cooper v. Chitty* (1 Burr. 31). "This relation," he says, "the statutes concerning bankrupts introduced to avoid frauds. They vest in the assignees all the property that the bankrupt had at the time of what I may call the crime committed (for the old statutes consider him as a criminal), they make the sale by the commissioners good against all persons who claim by, from, or under the bankrupt, after the act of bankruptcy, and against all executions not served and executed before the act of bankruptcy." But the 1 Jac. 1, c. 15, rendered valid the payment of debts due to the bankrupt without knowledge that he was bankrupt; the 21 Jac. 1, c. 19, sales by the bankrupt more than five years before the commission; the 19 Geo. 2, c. 32, payments by the bankrupt in the ordinary course of trade, without notice of bankruptcy on the part of the receivers. By the 6 Geo. 4, c. 16, ss. 81, 82, 84, 86, 108; by the 2 Vict. c. 11, s. 12, and particularly by the 2 & 3 Vict. c. 29, further important concessions were made in favour of creditors dealing with secret bankrupts, which may be said to have been substantially re-enacted in the 12 & 13 Vict. c. 106, ss. 133, 134. It will be enough for our present purpose to state that, by these last-named sections, all transactions by and with any bankrupt, bonâ fide entered into before the date of the filing of the petition, are protected, notwithstanding any prior act of bankruptcy, provided the person dealing with the bankrupt has no notice of any such prior act. And this protection would apply to a retaking by the real owner of goods left, with his consent, in the apparent ownership of the bankrupt, without notice of any act of bankruptcy. Moreover, under the same statute (sect. 69), the title of as-

signees of a bankrupt who had been a prisoner for debt related back, not to the first day of his imprisonment, but to the twenty-first, as being the day that completed his act of bankruptcy. This limitation of the period of relation had existed since the passing of the 6 Geo. 4, c. 16, which also shortened the period of lying in prison that was necessary to constitute an act of bankruptcy.

Under the Insolvent Debtors Acts the same state of things did not prevail. The title of the assignee commenced with the vesting order, but though in general it thus had no relation to any anterior date, yet the case of goods in the reputed ownership of the insolvent was made an exception to the general rule; and goods falling within this category were to vest in the assignee from the commencement of the insolvent's imprisonment.

Now, by the Bankruptcy Act of 1861, which amalgamated bankruptcy and insolvency law, the old modes of discharging prisoners were swept away, and a new one provided by sects. 93 to 95 and 98 to 104. The former sections regulate the petitions of ordinary prisoners willing and able to petition. The latter sections contemplate two classes of prisoners—those who are unwilling, and those who are unable (through poverty) to get out of prison. A monthly return of all the inhabitants of prisons is to be made to the Court of Bankruptcy; and one of their officials is to visit each gaol within three weeks from the date of the return, to examine the prisoners, and to adjudicate bankrupt, and discharge, all trader prisoners who have been lying in prison for fourteen days, and all other prisoners who have been lying there for two months; whilst prisoners refusing to answer or otherwise obstructing dealings with their estate, may be committed for an extra month. Other prisoners, willing, but unable through poverty, to get released, may petition the Court in formâ pauperis, and then (sect. 99) are to be "brought up" to the county court of the district, and there adjudicated bankrupt. And the 103rd clause, under which the question in *Bramwell v. Eglinton* arose, is, "Every adjudication against any prisoner for debt so 'brought up' as aforesaid shall, unless the Court shall otherwise direct, have relation back to the date of his commitment or detention, as the case may be."

We cannot here go into any minute or lengthened examination of the language of the statute, but we may remark, that the word "detention" had only been used once previously in the statute (viz. in the 71st section, which defines generally acts of bankruptcy, through lying in prison), and then in conjunction with the word "committed;" and that the words "brought up" had only been previously used in the 99th section, whilst a bringing up might be implied in the 102nd section. In *Bramwell v. Eglinton*, the defendant, after the arrest of the bankrupt, had retaken his own goods from the bankrupt's house, where they had been in the reputed ownership of the bankrupt; and the assignees, relying on this 103rd clause, brought trover for those goods, whilst the defendant contended that the clause referred only to the case of a contumacious prisoner, dealt with by the 102nd section, and in which

section the word "commitment" had been used, and the "detention" implied. It was also contended for the defendant, that the retaking was a protected transaction, under sect. 133 of the Bankruptcy Act, 1849. The Court of Queen's Bench, however, after taking time to consider, and experiencing "much embarrassment and great difficulty" in coming to any conclusion at all, decided in the plaintiff's favour. After an elaborate analysis of the statute, and various speculations as to the intentions of the Legislature, and regrets that those intentions had not been more clearly expressed, they were of opinion, that, as the words of sect. 103 were all satisfied, by applying that enactment to the case of a pauper prisoner who had been committed in execution, or detained, for debt, and brought up before the county court, the provision applied to this case; and also that, as the adjudication was made to relate back, not to the commitment as an act of bankruptcy, but to the commitment absolutely, there was here no prior act of bankruptcy, and therefore this transaction was not protected by sect. 133 of the act of 1849. The judgment also intimates, that, as regards other prisoners for debt not brought up before the county court, the question is still left open and undecided.

Now, it seems to us, that the Court has not construed this act in a right spirit. When a former act, passed in *pari materia* (6 Geo. 4, c. 16, s. 5), was before the Courts, a different rule was adopted. In the case of *Higgins v. M'Adam* (3 Y. & J. 1), the Court of Exchequer said, "The relation back to any antecedent period to make an act of bankruptcy, is a case strictissimi juris, and ought not to prevail, except where the words of the statute, upon which that construction is to be founded, are clear, and without doubt." And this ruling was approved and adopted in *Moser v. Newman* (6 Bing. 556) and *Belcher v. Gummow* (9 Q. B. 877); so that all the three Courts concurred in a broad and liberal construction of a similar bankruptcy act, and in favour of the rights of creditors; whereas the Court, in *Bramwell v. Eglinton*, has, "after much embarrassment and great difficulty," preferred a very narrow construction in favour of the rights of assignees.

As we are not bound by the same conventionalities as courts of law, or obliged deferentially to identify the framers of a statute with the Legislature, we have not much hesitation in pronouncing the 103rd section of the Bankruptcy Act of 1861 to be a blunder. If it was intended to work a relation back to the date of the commitment only in the case of pauper prisoners, no reason whatever can be assigned for making a distinction between this and the cases of other prisoners. It may, indeed, be said, that in this case the act is put in force by the voluntary act of the prisoner, and not put in force against him "in invitum," as in the case of contumacious prisoners; but the same remark would apply to the case of a prisoner petitioning under the 94th section; and, therefore, according to this classification, the relation back ought to operate only in the case of contumacious prisoners; as Bosanquet, J., in *Sims v. Simpson* (1 Bing. N. C. 317), points out in alluding to the then existing bankrupt and insolvent laws.

If, on the other hand, this section was intended to comprehend all prisoners discharged under the act, no reason has been given for such a retrograde step in legislation; and, moreover, the words used have, according to the judgment in *Bramwell v. Eglinton*, failed to accomplish their intended object.

It is also clear, that if in all cases of imprisonment, the title of the assignee is to relate back to the first day of imprisonment, bona fide transactions with the prisoner ought to be protected from that date also.

Upon the whole, there is only one part of this judgment with which we can heartily agree, viz. "that as to this, and other details of this very important act, it is much to be desired that the Legislature should interfere, and make clear enactments."

ON VOLUNTARY SETTLEMENTS.

AFTER considerable fluctuation, the rule that equity will not lend its assistance to perfect a conveyance on behalf of volunteers, has been restrained within the limits of good sense, and so as not needlessly to interfere with the common arrangements of property. The rule itself, a rule analogous to that of the common law, which denies the validity of a promise without consideration, is unexceptionable, but such an extension of the rule as would render an equitable estate or interest unassignable otherwise than for value, is opposed to that full and unfettered freedom of alienation—to that "*jus disponendi*," without which the "*jus fruendi*,"—the mere right of personal enjoyment becomes comparatively worthless. To deny effect to a voluntary disposition, on the ground simply of a legal estate or interest being outstanding in a third party (even in cases where such third party would be bound, on application by the settlor, to convey or assign according to his request), appears to be an arbitrary doctrine, which either gives to the settlor a locus penitentiae where such ought not to exist, or enables the settlor's representatives to disappoint his intentions, and to enrich themselves at the expense of his donees. In many cases a settlor does not trouble himself about, or, perhaps, is not cognisant of, the existence of outstanding legal estates or interests; but if he is aware of them, there can be no valid reason why, as a condition precedent to the efficacy of this voluntary disposition, he should put himself to the cost and inconvenience of obtaining a conveyance of them for the objects of his bounty. If the settlor's intention be fixed and definite, and his language and conduct shew that he contemplates an immediate, present disposition, any reference to the fact of there being, or not being, an outstanding legal estate or interest in some third person, seems wholly beside the question.

It is satisfactory to find that there is at present no ground to apprehend that the wholesome doctrine laid down in *Kekewich v. Manning* (1 De G., Mac., & G. 176), "that a person sui juris acting freely, fairly, and with sufficient knowledge, ought to have, and has, it in his power to make, in a binding and effectual manner, a voluntary gift of any part of his property,

whether in possession or reversionary, and howsoever circumstanced," will be set aside or frittered away. In the recent case of *Gilbert v. Overton* (10 Jur., N. S., part 1, p. 721), Sir W. P. Wood, V. C., distinguishing, though evidently disapproving, the reactionary decision of Sir J. Romilly, M. R., in *Bridge v. Bridge* (16 Beav. 315), has decreed the assistance of the Court in support of a voluntary settlement of an interest under a contract for a lease, by a person who subsequently to the settlement obtained the lease in his own name. The Vice-Chancellor says—"All that is required is a valid declaration of trust," and goes on to assert that "the distinction between a simple assignment upon definite and declared trusts, and a declaration by the settlor constituting himself a trustee, has been quite exploded."

There is a case of *Airey v. Hall* (2 Jur., N. S., part 1, p. 658), the authority of which has been doubted by Messrs. Davidson & Waley (3 Conv. 845, part 2), but which seems quite in accordance with the broad principle above enunciated. In *Airey v. Hall* the settlor by deed purported to assign stock standing in his own name to trustees, upon definite trusts, but did not transfer the stock in the bank books. Sir J. Stuart, V. C., supported the settlement. It appears to us that the non-transfer affected the form only, and not the substance of the transaction, the real question being this—viz. did the settlor intend, or did he not intend, to create a present trust, either in himself or in a third party? If in a third party, the mere accidental circumstance of his having failed to vest the legal ownership in the trustee ought not to affect the question. The absence of an effectual transfer of the legal estate or interest may properly be regarded as an important element, in determining whether the settlor's intention be executory or executed, i. e. of immediate operation, but ought not, we think, to be made a criterion, negating conclusively the existence of a trust. We incline to the belief that *Airey v. Hall* was rightly decided.

Though the principles now applied to voluntary settlements are in the main founded on sound sense, a signal exception, but one rendered inveterate by a long course of judicial decision to be dealt with otherwise than by the Legislature, occurs in the well-known 27 Eliz. c. 4 (the Statute of Purchasers), which enables a settlor to defeat his own deliberate conveyance of real estate by a subsequent sale, and that even although the purchaser has full notice of the prior settlement. The reason given, that the sale itself is an indication of a fraudulent intention in the settlor, at the date of the settlement, is a mode of applying the doctrine of "relation" which will not bear a moment's consideration; the real fraud, of course, consists in the attempt of the settlor to play fast and loose with the volunteers, and in his conspiracy with the purchaser to defeat their reasonable expectations and destroy their vested rights. As an additional hardship for the unfortunate donees, it seems that when thus deprived of their estates by the settlor, they are utterly destitute of any charge on, or equity in respect of, the purchase money, which the settlor is permitted coolly to place in his own pocket. (See

Daking v. Whimper, 26 Beav. 568). Few persons, not in the profession of the law, are aware, and very many, though in the profession, are not aware, and it would be difficult to make a foreigner believe, that at the present day it is practically impossible to make a free gift of a piece of English land.

We think these anomalies discreditable to the jurisprudence of the country, and quite deserving of an act of Parliament for its removal.

EXTRACTS

FROM THE EXPLANATORY OBSERVATIONS PREFIXED TO THE FIRST REPORT OF THE COMMISSIONERS APPOINTED TO PREPARE A CODE OF SUBSTANTIVE LAW FOR INDIA.

(Presented to both Houses).

WE have not judged it advisable that the rules for the devolution of movable property should be (as in England) different from the rules for the devolution of immovable property. The English who possess immovable property in India generally look upon it merely as a temporary investment, not intending to establish their families there permanently. Nor are the Armenians, the Parsees, or any of the classes to whom the new law is intended to apply, in the habit of making a distinction between the succession to movable and to immovable property, any more than the Hindoos and Mahomedans themselves.

We propose, therefore, that the general law of India shall make no distinction in this respect, but that the devolution of property of every kind shall be governed by one system of rules.

It has been necessary for us in one or two cases to introduce provisions affecting rights as between living persons. We propose that a man shall not, through the mere operation of law, acquire by marriage any interest in his wife's property during her life, but that she shall continue to possess the same rights with reference to it as if she were unmarried, and shall have full power to dispose of her property by will.

We propose, in case of intestacy, to give a widow the same rights in respect of all the property of her husband, as a widow has in England in respect of her husband's personal property; providing at the same time that when there is a widow, and no kindred, of the intestate, the whole property shall belong to her, instead of one-half going to her, and the other half to the Crown. For this provision, if it shall be approved, your Majesty's gracious sanction previous to enactment will be requisite.

The husband, where he survives his wife, is to have such rights in respect of her property as the wife has in respect of his property where she is the survivor.

Such powers as we propose to confer on the wife are frequently reserved to her even in England by the terms of her marriage settlement; and we believe that the introduction of the English property law of husband and wife would not be acceptable to any of the classes for whom these rules of succession are intended.

We propose to omit the rule of the English law by which, in cases of total intestacy, anything which a child may have received from the father in his lifetime by way of advancement, is deducted from his share of his father's estate. This rule, though founded upon a desire to equalise as far as possible the benefit derived by children from their father's property, often fails to effect that object, and proves productive of considerable inconveniences. It tends to encourage

minute and difficult investigations of matters of family account, and it frequently interferes with the arrangements of a father who has given property to a child by way of advancement, and yet has not seen fit to make any alteration in his testamentary dispositions; and these evils, which are often felt in England, would be still more felt in India.

We have provided that persons of either sex shall at the age of eighteen be entitled to make a will, and be of age for all purposes. This is the age at which the courts of wards withdraw from the management of the estates of youthful landholders.

In all that relates to the execution and revocation of wills, we have taken as a basis the act known as Lord Langdale's (stat. 1 Vict. c. 26), which is already in force as to all wills proved in the high courts of the three presidencies other than the wills of Hindoos and Mahomedans. But we have modified its provisions as to execution, which, we think, would be likely to cause frequent intestacy.

Here, as elsewhere, we have departed from the English law where its provisions appeared to us to be objectionable in themselves, or especially inapplicable to India. Above all things we have aimed at giving effect to the plain meaning of the words of the testator, without endeavouring to do or to say for him that which he has not done or said for himself. We have accordingly discarded the rules by which the English Courts are compelled to presume, in the absence of any intimation of a contrary intention, that where a debtor bequeaths to his creditor a legacy equal to or exceeding the amount of his debt, the legacy is meant by the testator to be a satisfaction of the debt; that where a parent, who is under a legal obligation to provide a portion for his child, fails to do so, and afterwards bequeaths a legacy to the child, the legacy is meant to be a satisfaction or fulfilment of the obligation. We have in like manner discarded the rule of English law, that where a father bequeaths a legacy to a child, and afterwards advances a portion for that child, he thereby adeems the legacy. We have endeavoured so to frame the law in this respect as to prevent the occasion from ever arising, which in England requires a nice balancing of judgment, the exercise of large discretion, the prosecution of a difficult inquiry, and the admission of parol evidence of the intentions of testators.

We have inserted provisions for defining expressions used in wills to denote kindred and representation, and for giving the legacy absolutely to the first taker, where words are added which are (in legal phrase) words of limitation, and not of purchase.

We have restricted the power of creating successive interests in property by will, by providing that interests so created shall not extend beyond the lifetime of persons living at the testator's death, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attain the age of eighteen, the thing bequeathed is to belong. We have provided that a bequest to a person not born at the testator's death must comprise the whole of the interest of the testator in the thing bequeathed; and that where, at the time fixed for the payment of a legacy, the person for whom it was intended has not come into existence, the bequest shall have no effect. We have also provided that directions to accumulate the income arising from any property shall be void.

We have likewise provided against death-bed bequests to charitable uses by persons having near relatives.

On the subject of conditions, we have deemed it right to abstain from introducing into India the very refined distinctions which the Court of Chancery has, in questions relating to personal property, borrowed

from the ecclesiastical courts. We think that the words of the will should be adhered to where no condition inconsistent with law or morality is sought to be imposed; that all bequests made upon illegal, immoral, or impossible conditions should be void; and that wherever the testator's wishes can be carried into effect, if expressed in one way, they ought to be permitted to take effect if expressed in any other way; so that whatever he can do by a limitation he ought to be allowed to do, by imposing a condition. It appears also to us, that whenever a condition subsequent is valid, if accompanied with a gift over, it ought to be valid without a gift over, and ought not to be treated as if it had been inserted merely to frighten the legatee by an unmeaning threat.

We do not propose to extend to India the rule, which enables an executor to pay any creditor (whether himself or another person) in preference to another creditor of equal degree. We have provided, that funeral and death-bed expenses, and charges of probate and administration, are to be first paid, then wages due to any labourer, artisan, or domestic servant employed by the deceased; and that in respect of no other debt shall a creditor be entitled to a preference, either by reason of its being secured by deed under seal, or on any other account.

On the subject of domicile we have provided, that a man shall not acquire a domicile in India merely by residing there as a soldier in her Majesty's service, or in the discharge of the duties of any public office, or in the exercise of any profession or calling. This provision is, as regards the bulk of the army, nothing more than a statement of the existing law. Its application to the staff corps, and to the official and professional classes, may, perhaps, be less favourable to the acquisition of an Indian domicile by those classes than the strict rules of English law, but we believe that it is the most just and suitable rule that can be laid down for India. We have, however, provided for the acquisition of an Indian domicile by persons desiring to possess it.

The rules which we have prepared are intended to apply generally to the immovable property in India of persons not professing the Hindoo or the Mahomedan religion, and to the movable property of all persons domiciled in India, and not professing the Hindoo or the Mahomedan religion. We desire, however, to point out, that one great object of the proposed code is ultimately to introduce one uniform system applicable to all classes, wherever this can be properly and safely accomplished.

Following the example set by the framers of the Indian Penal Code, we have made copious use of illustrations. All the commissioners think, that illustrations carefully framed are calculated to assist in the administration of the law, although we do not all take the same high view of the importance of illustrations which was expressed by the framers of the Penal Code. The advantages contemplated by those commissioners from the use of illustrations were set forth, and dilated on by them, in their letter to the Governor-General in Council, dated the 14th October, 1837, with which they submitted their draft of the Penal Code. The observations contained in that letter appear to be so pertinent to this matter, that we think it desirable to quote a portion of that part of it which relates to this subject:—

"One peculiarity in the manner in which this code is framed will immediately strike your Lordship in Council. We mean the copious use of illustrations. These illustrations will, we trust, greatly facilitate the understanding of the law, and will, at the same time,

often serve as a defence of the law. In our definitions, we have repeatedly found ourselves under the necessity of sacrificing neatness and perspicuity to precision, and of using harsh expressions, because we could find no other expressions which would convey our whole meaning, and no more than our whole meaning. Such definitions, standing by themselves, might repel and perplex the reader, and would, perhaps, be fully comprehended only by a few students after long application. Yet such definitions are found, and must be found, in every system of law which aims at accuracy. A legislator may, if he thinks fit, avoid such definitions, and by avoiding them he will give a smoother and more attractive appearance to his workmanship; but in that case he finches from a duty which he ought to perform, and which somebody must perform. If this necessary but most disagreeable work be not performed by the lawgiver once for all, it must be constantly performed in a rude and imperfect manner by every judge in the empire. . . . We have, therefore, thought it right not to shrink from the task of framing these unpleasing but indispensable parts of a code. And we hope that when each of these definitions is followed by a collection of cases falling under it, and of cases which, though at first sight they appear to fall under it, do not really fall under it, the definition and the reasons which led to the adoption of it will be readily understood. . . . The definitions and enacting clauses contain the whole law. The illustrations make nothing law which would not be law without them. They only exhibit the law in full action, and shew what its effects will be on the events of common life.

"Thus the code will be at once a statute book and a collection of decided cases. The decided cases in the code will differ from the decided cases in the English law books in two most important points. In the first place, our illustrations are never intended to supply any omission in the written law, nor do they ever, in our opinion, put a strain on the written law. They are merely instances of the practical application of the written law to the affairs of mankind. Secondly, they are cases decided not by the judges but by the Legislature, by those who make the law, and who must know more certainly than any judge can know what the law is which they mean to make."

We also wish it to be fully understood that the correctness of the decision contained in any illustration is not to be questioned in the administration of the law. The illustrations are not merely examples of the law in operation, but are the law itself shewing by examples what it is. The statements that "the definitions and enacting clauses contain the whole law," and that "the illustrations make nothing law which would not be law without them," are correct, if understood as merely importing that, in the view of the Legislature, the illustrations determine nothing otherwise than what without them would have been determined by a right application of the rules to which they are annexed. As, however, much law has been made by judicial decisions, which determine questions respecting the application of written rules of law, so law may without impropriety be said to be made by the illustrations, in the numerous cases in which they determine points about which, without their guidance, there would be room for difference of opinion even among learned and able judges. It is chiefly in this way that the illustrations, while they make the definitions and rules more easy to be understood, also serve to render them more precise. The operation of judicial decisions in making law precise is a natural process, and that process is adopted and improved in the use of illustrations. The laws of England, as they exist, are to be found partly in rules and principles, some of which

are contained in statutes and some in books not stamped with any legislative or even judicial authority, and partly in the reports of decisions by judicial tribunals. Law framed in the way in which we have endeavoured to frame it, also consists of rules and principles combined with decided cases, but with this difference, that the decisions are not made by judges in trying causes, but by the Legislature itself, in enacting the law, and though they are an important part of the law, settling points which without them would have been left to be determined by the judges, yet they are strictly confined to the function of guiding the judges in their future decisions, and of explaining in what manner the definitions and rules to which they are annexed are to be interpreted and applied.

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THE JURIST.

LONDON, SEPTEMBER 3, 1864.

WHEN the recent re-arrangement of circuits took place, some entertained sanguine expectations that the Home Circuit would be amongst the number affected by the change. So confidently was this opinion held, that considerable discussion ensued as to the manner and extent of the interference with this circuit. According to one rumour, Essex was to be taken from it, and given to the Norfolk Circuit, whilst Hampshire was to be added to the Home in lieu of Essex; but no satisfaction was proposed to the Western Circuit for its loss of Winchester. According to another account, Essex was to be given to the Norfolk Circuit, and Sussex to the Western Circuit; whilst the remaining counties of Hertfordshire, Kent, and Surrey were to be formed with Middlesex into a central district, the assizes for which should be held coterminously with the other assizes or other circuits, but in London. In fact, a Central Civil Court, as well as a Central Criminal Court, would thus be sitting in London to represent the Home Circuit all the time that the other assizes were being held throughout the country. In this way, as it was said, vested interests might be recognised and upheld, an enormous abuse rectified, and a great boon to the public conceded.

But, as is well known, no interference with the Home Circuit took place; and it may be, therefore, wondered why, in these pages, and at this dead time of the legal year, the subject should be re-opened. To all such speculations our reply must be, that another assize on the Home Circuit has just terminated, that more than the usual needless waste of time and money has occurred, and that "*indignatio facit sermonem.*" Let the question be considered closely. The Government, in declining to interfere with the Home Circuit, must have been either unwilling to injure alleged vested interests, or must have been unconvinced that any case was made out for interference. The vested interests are, we suppose, the rights of the public, and the rights of practitioners, whether barristers or attorneys. The public, it is asserted, have a right to have justice brought home to their own doors, as it is termed; and to compel the inhabitants of Hertfordshire, Kent, and Surrey, to resort to London for justice, is represented as a practical denial of this right. Such an argument might, perhaps, have proved convincing in the days before railways; but in the present time there can be little doubt but that most of the inhabitants of these three counties would find access to the metropolis more quickly, more cheaply, and more conveniently, than to their respective county towns. If this be true, the rights of the practitioners are not to be set against the rights of the public; the law is not manufactured or practised for the good of the lawyers, but for the public. But we very much doubt whether the hypothetical rights of lawyers would in any way be injured by the proposed abolition of this circuit. The present alleged exclusive rights of the barristers belonging to the circuit to share in its emo-

luments would be amply preserved by the restriction of the sittings of the proposed Central Civil Court and Central Criminal Court within a period when other barristers would be absent on their own respective circuits, whilst a great source of loss to them, traceable to the travelling and usual lavish expenditure attendant on circuit, would be dried up. Respectable attorneys would be only too happy to avoid the loss of time, and the inconvenience entailed on them by personal attendance at the petty provincial towns where the assizes are held; and the inferior class of attorneys, who only regard an assize trial as a means of swelling their bill of costs, do not deserve, and will not obtain, much commiseration for being compelled to abandon such a species of profit.

If, as we have already hinted, country causes arising within the three named counties can be more cheaply, more conveniently, and more expeditiously tried in London than in the assize towns, it would seem that already a strong case has been made out for the abolition of the Home Circuit. But this is not all the case. In reality, the proportion of country causes tried on this circuit is infinitesimally small, and the cause lists are mostly made up of London causes brought down to be tried at Hertford, Maidstone, Kingston, Croydon, or Guildford. In some instances this arises from the delay that would otherwise fall on suitors through not having their causes tried until the next sittings in London or Middlesex; and to avoid this delay extra expense and inconvenience are submitted to. But for the most part the lists, especially in Surrey, attain magnitude only through the interested efforts of a certain class of London solicitors, who are well aware that more is to be made out of a trial at the assizes than in town, and who in consequence keep for the Surrey venue all the trumpery, and frivolous, and vexatious actions that they can possibly rake together. Some proof of this, if it be necessary, may be found in the fact, that at the Guildford Assizes which are just over, eighty-one common jury causes were disposed of in five days. Without doubt, the promoters of this class of actions, and the inhabitants of the various assize towns find it to their interest to uphold and maintain the existing state of things, and to deprecate the touch by any rude hands of the altar of the ancient and time-honoured institution of the Home Circuit; but an almost effete arrangement is scarcely to be preserved only for the special behoof of these gentry.

The judges (on whom circuit throws great expense and much annoyance), the bar, and the majority of solicitors, would, we believe, be but too glad to discontinue the Home Circuit; and the public, if they once got hold of the true state of the case, would be unanimous in demanding its abolition. Of the inconvenience of a trial in the poky stuffy courts of provincial towns, all persons who have had painful experience thereof, can testify; but of the difference in expense between a trial there and in London or Middlesex, neither they nor the majority of the public have any idea. An honest attorney would inform his client that it would be a saving of money for him to pay a doubtful claim of 20*l.* or 30*l.*, rather than to go down

and contest the matter at these assizes on the chance of a successful resistance; and this advice would be given, although the attorney would be aware that the other side probably speculated upon that very advice being given and followed.

We have no doubt but that the Profession, as a body, would concur in bearing testimony to the accuracy of what we have written; and no Royal Commission would be needed to elicit for the Lord Chancellor what a few queries from him to any judge, solicitor, or common-law barrister would draw forth; but it is not probable that until the public come to learn the flagrancy and scandal of the abuses that are practised upon them under the pretence of going the Home Circuit, its doom will ever be pronounced.

There is one class of men, we mean London jurors, who might, perhaps, murmur at any increase of the number of town trials, but if the mode of summoning London jurors were only fairly carried out, there would be no just ground of complaint on this score, even if the number of causes entered for trial here were increased one hundred fold.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—The very distinguished lawyer, a copy of whose answer to the circular issued by the Bar Committee on Law Reporting is inserted ante, p. 325, is entitled to be attentively heard; the Profession, indeed—the working part of it at least—have long sat at his feet, to speak figuratively, as their Gamaliel in the law; in this instance, however, I find myself quite unable to concur in the views of his Lordship on the subject of reporting. Lord St. Leonards first divides the present reports into two classes—the early and unauthorised, the late and authorised—and then adds:—"Open to objection as the scheme may be, the Bar, I think, would not be willing to lose either the earlier or the later reporter." As one member of the Bar, I confess I should be delighted to lose the *later* reporter, whether authorised or not, not seeing the marked superiority of what are called the authorised reports, and being inclined to believe, that if your own reports, Sir, or any other equally well-conducted series, stood alone, free from what I cannot but deem a pernicious competition, they would be likely to satisfy all our requirements. I do not, however, advocate concentration to this extent, or to any extent, without the action of the Legislature. His Lordship proceeds to state, that he would not invoke legislative interference, or Government supervision, or the appointment of short-hand writers, because, to quote his words, "you can no longer prohibit, or control by the strong hand, reporting." I see no connexion between the fact stated and the reason given. Anybody, of course, may report, but a judge is not bound to listen to any report unless he chooses; precedent is authoritative, *when ascertained*, but, according to Lord St. Leonards' own admission, we have only arrived at this degree of certainty, that a newspaper report of a case will not be

permitted to be read. It is this nervous apprehension of surrendering privileges that embarrasses our efforts in the direction of reform. The privilege of reporting *for the ear of the Court* should doubtless remain in the Bar, but, in my opinion, be exercised by barristers selected by Government in each court for that purpose. His Lordship continues:—"There are, perhaps, too many weekly reporters, but not too many of those I term the regular reports." Is the difference, in this sentence, between *reporters* and *reports* intended? I suspect not; but the truth is, that there are too many reporters, authorised or not, and too many reports. His Lordship, however, thinks that the evil should be left "to cure itself," and that a still greater number of frail reporting vessels, laden with more or less costly precedent, may be periodically launched, if they be deemed likely to reach the port of judicial approbation. To quote further:—"One evil of numerous reporters is, that cases, however unimportant, are reported . . ."—an evil, truly, of portentous growth! Again: "The regular reports are, no doubt, open to some objection. Many cases depending upon local acts, *which are not likely ever again to come into discussion*, are reported at great length; so cases, for example, depending upon the construction of a long correspondence, can hardly be usefully reported, *unless the judge lays down or explains a rule of law*. It would be useless to multiply instances." I do not think that his Lordship is here very happy in his selection, or very lucid in his definition, of what ought to be omitted from a volume of reports. His Lordship next refers to the propriety (which he admits) of a judge going at large into an examination of the facts, "for the satisfaction of the suitor" (I fear that the judgments of Lord Justice Knight Bruce could not be cited as instances of this habit), but says, that the reporter would not be justified in fully reporting such a judgment. He generally does so, however. His Lordship continues:—"But these things can be easily corrected, and it would be desirable that one uniform plan of printing should be adopted. *No number should close with part of a case*," &c.—the arrangement italicised, and prohibited by his Lordship as a sort of fraud upon the purchaser, is, I should imagine, a simple necessity, and I cannot but think that these remarks of his Lordship are *infra dignitatem*. To continue:—"The booksellers have so managed, that after the lawyer has half-bound his reports, he finds their value in his hands not largely exceeding the cost of the binding." Can this be true? Take Hare's Reports, for instance; are the eleven volumes that I see before me worth (mine are whole bound) not much more than 1*l.* 18*s.* 6*d.*? Hear the conclusion:—"There should, therefore, be no reports of unnecessary length, or of points not of importance." Omitting the word "therefore," which casts a slur on a very respectable body of the community, I agree with his Lordship. Further:—"The long-continued labours of a reporter should not be overlooked in dispensing legal patronage." What connexion has this statement with the subject? His Lordship then states, that although he is opposed to legislative authority, he would have some control exercised over reporters. Of what nature? That of the Bench and Bar. "The reporter should not be under or subject to the judge, but

should be in confidential communication with the judges." His Lordship then refers to the fact, that Lord Denman gave copies of his judgments to two rival reporters—he might have done similarly to half a dozen—and thereupon follows this amazing statement:—"It is not probable that there will hereafter be more than one report of the proceedings of each Court." Whence does this non-probability emanate? Hear, O incredulous reader! From what is now passing—The Report of the committee, which his Lordship presumes will be made (which has been made, and given general dissatisfaction)—from the appointment of another committee, a permanent body, a sort of *family council* (his Lordship's own phrase), whose duty would be to keep a *friendly eye* (again his Lordship's own phrase) over the reports! The power of this council, which is to suggest improvements, to communicate with the Bench and Bar thereon, to call a general meeting of the Bar, is to be exercised so as not to wound the feelings of" &c. &c. Any attempt to purchase the interests in any existing reports is considered by his Lordship to be "altogether inadmissible." His Lordship next considers what ought to be done with the reports, existing and future. His answer to this question is simple and concise—nothing ought to be done with either. We cannot hope to excel Comyns, Gilbert, Coke, Plowden, Viner—why, then, digest the cases? If we prefer poetry to prose, we have the following exquisite couplet:—

"If he for life enfeoff in fee,
It bars remainders in contingency."

So much with respect to existing reports. As to future decisions, his Lordship does not rest altogether on the same basis of argument, but asks, in effect, "Who is to perform the task of consolidation and revision?" His Lordship lastly refers to digressive treatises on various branches of the law, and says, that such treatises only influence the judges by the force of the observations contained therein, but are happily not law. However able the pleading of his Lordship may be, the statute book has, up to a certain period, been profitably expurgated and revised; and I am inclined to think, with Lord Westbury, that our steps should be towards codification. Would any commercial man, in the possession of his right senses, allow papers to accumulate upon him, without an attempt at arrangement or revision? The country groans under a mass of legal rubbish, which ought to have been long since removed. We are still toiling in the morasses of the law, where not seldom the ignis fatuus of wrong decision leads the unwary astray. To be delivered from these existing evils by expurgation and revision would be an incalculable boon to the public—to be delivered, as far as possible, from their recurrence, ought to be demanded by the same public from the Legislature as a right. It is easy to leave matters in statu quo, and there is always difficulty connected with amendment. The increase of reporters and reports has doubtless partly arisen from the action of cheap literature in this direction. We ought to have reports cheap, but do not; we ought to have them certain, but do not. Our social privileges lie in the hands of a few persons as judges and jurymen, and we have no ground for complaint; let the privilege of reporting for the ear of the Court be similarly restricted, and, by the appointment of a public reporter for each court, let the profession and the public be freed from a system (if it deserve the name) alike of competition and confusion.

Your obedient servant,

Rolls Chambers, Chancery-lane, G. L.
Aug. 22, 1864.

Reviews.

The Institutions of the English Government; being an Account of the Constitution, Powers, and Procedure of its Legislative, Judicial, and Administrative Departments. With copious References to Ancient and Modern Authorities. By HOMERSHAW COX, M.A., Barrister-at-Law, Author of "The British Commonwealth," &c. [Sweet. 1863.]

The British constitution may be looked on in three points of view:—

1. Historically—i. e. with reference to its rise and progress.
2. Actually—i. e. in the existing state of its fundamental laws.
3. Philosophically—i. e. the theory of it, as deduced from its elements and practice.

The first of these, however interesting and valuable in itself, would hardly form a sufficient base for a treatise on the constitution. Besides, a treatise of that kind, in order to be intelligible to the reader, requires a considerable amount of historical knowledge, and it likewise involves many disputed questions.

The second, standing alone, would be incomplete. The essence of the British constitution we take to be, that its fundamental principles for the most part remain, though its non-essential ones and its forms change. Things may form part of the constitution, understood in one sense, which are not constitutional, and vice versa; e. g. the institution of slavery, which formerly existed in this country, was at that time an element in its constitution, yet, tried by our modern notions at least, was eminently unconstitutional. So, at the present day, it would be taken for granted by most persons that the publicity of the debates in Parliament is essentially part of our constitution, which it undoubtedly is in one sense, yet it was condemned in theory, and almost unknown in practice, until within about a century of our own time.

The third is open to still greater objection. Dealing, as it necessarily does, with theory only, the speculative, and sometimes the imaginative, are apt to take the place of the present and real.

On the whole, the true way of treating the subject seems to be, to take for basis the second of the above, namely, the actual state of the system, using the other two as adjuncts. The British constitution, thus understood, may be described, if not defined—the spirit of the British laws, and the forms of the British government. The obvious difficulty in writing on the subject—a difficulty which has been amply illustrated only too often—is, to avoid adopting or representing party, doubtful, or uncertain principles as essential parts of the system. The general notion of the British constitution entertained by the bulk of mankind in this country is, that it lies in the Magna Charta, the Bill of Rights, the Habeas Corpus Act, &c.; but it is, in truth, a collection of principles and usages, of which those invaluable documents are but fragments. Many others, again, would define it a government by King, Lords, and Commons—a definition which conveys an idea of our constitution no more than the inspection of a skeleton conveys an idea of the human frame, and perhaps not so much.

The author of the work before us, as also Professor Creasy, in his much smaller work*, intitled "Rise and Progress of the British Constitution," seem to have considered this as the proper mode of treating the subject.

* The Treatise of Professor Creasy is contained in 340 pages small 8vo.; that of Mr. Cox extends to 737 pages large 8vo., exclusive of the preliminary analysis and index.

The last mentioned says (p. 3), "An impartial and earnest investigator may remain convinced that England has a constitution, and that there is ample cause why she should cherish it. And by this is meant, that he will recognise and admire, in the history, the laws, and the institutions of England, certain great leading principles and fundamental political rules, which have existed from the earliest periods of our nationality down to the present time; expanding and adapting themselves to the progress of society and civilisation; advancing and varying in development, but still essentially the same in substance and in spirit." And the nature of Mr. Cox's work is indicated by its title, as well as the Preface, in which he informs us (p. vii), that "the object of the following pages is to collect from ancient and modern authorities a general account of the British Government, of the powers and practice of its several departments, and of the constitutional principles affecting them." P. ix, "In order to confine this work within the limits of a compendium, it has been deemed advisable to exclude all researches of purely antiquarian interest, and all merely speculative politics. It would not, indeed, have been expedient to have excluded all historical and theoretical researches, for there are many important provisions of the constitution which would be unintelligible without reference to them. But throughout this work such researches have been carefully limited to the purpose of illustrating the use and operation of established principles and institutions of government. Scire autem propriè est rem ratione et per causam cognoscere." And in the work itself (p. 2), "It is requisite at the outset of this inquiry to define the limits of constitutional science. It is the province of the science of legislation to investigate generally the principles upon which laws ought to be founded; but of constitutional science, to consider only the *manner* in which laws ought to be made and executed. It is, therefore, not intended here to enter at large upon that wide field of investigation which the science of legislation comprehends, but to survey only that part of it which relates exclusively to the method adopted in this country of making and executing the laws. The two-fold object of constitutional science just mentioned, corresponds to a division of the functions of Government into two classes,—that of making laws, and that of executing them." He subdivides the executive power into the *judicial* and *administrative* bodies.

Following up these views, Mr. Cox divides his work into three books, treating respectively,—1. "Legislation;" 2. "Judicature;" and 3. "Administrative Government."

These are subdivided into chapters, as follows:—

Book 1.—LEGISLATURE.

Chap. 1. Divisions of Government.

2. The authority of Parliament.
3. The origin of Parliaments.
4. The acts of Parliament.
5. Legislative prerogatives of the Crown.
6. The parliamentary powers of the Crown.
7. The constitution of the House of Lords.
8. The constitution of the House of Commons.
9. Procedure in Parliament.
10. The Privy Council and Cabinet Council.
11. The rights of petition, public meetings, and the press.

Book 2.—JUDICATURE.

Chap. 1. Divisions of the judicature.

2. Origin of courts of law.
3. Judicial offices.
4. Procedure in courts of justice generally.

5. The supreme power of the law.
6. The judicature of Parliament and the Lords.
7. The judicature of the Privy Council.
8. The Court of Chancery.
9. The superior courts of common law.
10. Courts of criminal jurisdiction.
11. Courts of special civil jurisdiction.

Book 3.—ADMINISTRATIVE GOVERNMENT.

Chap. 1. Division of administrative offices.

2. Administrative prerogatives of the Crown.
3. The title of the Crown.
4. Origin and distribution of administrative offices.
5. The Privy Council and its committees.
6. The Secretarial departments.
7. The Fiscal administrative offices.
8. Military and naval offices.
9. Local administrative government.

Such is the plan of Mr. Cox's work, which has been ably carried into execution by its author. It is written in a clear style, contains a vast amount of constitutional knowledge, and is calculated to give a good idea of the working of our political system, while mere party questions have been carefully eschewed. Mr. Cox, as appears to us, evinces sound knowledge of the principles which pervade the British constitution. As instances, we may refer to the seventh chapter of the first book, where he discusses the well-known theory of the balance of power in the three branches of the Legislature, which he defends, we think successfully, against the attacks of Bentham and J. Mill (pp. 75, 76, 77, 88, 91). So at pp. 247-258, there is a good dissertation comprising much historical information, on "the origin of the two modern principles of *dependence of the cabinet upon parliamentary majorities*—and of *political unity of the cabinet*." The discussion at pp. 431-438, of the proposition that laws may be theoretically perfect, and yet practically oppressive, well repays perusal; and we commend it especially to those persons who, if a "Department of Justice" is to be established, would construct it so as to place the judges under the control of a minister of the Crown. And those who seek to abolish grand juries, and all rights of private individuals to prosecute for crime, meet with no encouragement from Mr. Cox. (Pp. 457, 458).

The practice and usages of debates in Parliament are well explained in this work. (B. 1, ch. 9). This is a subject of more importance to the general community than might at first sight be imagined, for the rules of debate in well-conducted public meetings usually follow, as far as it is known, the practice of the House of Commons. An instance of inconvenience from ignorance of it may be seen in *Reg. v. The Vicar and Churchwardens of Hammermith* (3 B. & S. 504, note). The writer of this notice was present at a meeting, where, on a motion being made, and an amendment proposed, the question presented itself, whether the motion or the amendment ought to be put first, and both parties appealed to the practice in the House of Commons. The chairman, a barrister of some standing, laid down that there the amendment was *always* put first; in which he was corrected by another barrister, also of some standing, who declared this to be a popular error, as there the motion was *always* put first. A slight knowledge of the forms of that House would shew, that there is no universal rule on the subject, and that whether the motion or the amendment is put first, depends upon the nature of the amendment (see the present work, pp. 140-1); and cases sometimes occur in which it becomes a matter of considerable difficulty to say which is entitled to take precedence.

There is also a good discussion, at pp. 376-8, of the disputed question, "Whether counsel are justified in advocating a cause which they *believe* to be unjust," which the author determines in the affirmative, for reasons which appear satisfactory. Mr. Cox does not distinctly say how this would be if the advocate *knew* the cause to be unjust, e. g. if he would be justified in defending a person accused of an offence which he himself saw committed by the accused.

But although we have read this work with much pleasure, we must not neglect our duty as critics, in pointing out errors or blemishes in it, and although these are chiefly respecting matters of a technical nature, there are others of a more serious character.

In the first place, the work is preceded by an analysis of fifty pages, which, we think, might be omitted both with safety and advantage. As a table of contents it is too long, as well as needless, there being also a table of contents of seven pages, while as a treatise it is too short.

To come to the work itself. At p. 290, Mr. Cox informs us, that the 32 Geo. 3, c. 60 (Fox's Libel Act), "*greatly enlarged the functions of the jury in cases of 'indictment or information for the making and publishing any libel.'*" But that act both is and professes to be merely declaratory of the common law, which had been shamefully invaded in cases of libel by several unconstitutional decisions. So, judging from what Mr. Cox says, at pp. 217 and 292, he would seem to be under the erroneous, though common impression, that the protection from civil and criminal proceedings enjoyed by persons publishing libellous matter in parliamentary papers, is derived solely from stat. 3 & 4 Vict. c. 9. To determine this either way, is to beg the question in dispute between the House of Commons and the Court of Queen's Bench, in the proceedings which gave rise to the celebrated case of *Stockdale v. Hansard* (9 Ad. & El. 1). The effect of that statute, as it appears from its preamble, was to give *summary* protection to such parties; and by the 4th section, "It is expressly declared and enacted, that nothing herein contained shall be deemed or taken, or hold or construed, directly or indirectly, by implication, or otherwise, to affect the privileges of Parliament in any manner whatsoever."

At p. 404, in stating the contents of the 14 & 15 Vict. c. 99, Mr. Cox lays down, that "in any proceeding in any court of justice the parties thereto, or persons interested in it, are competent and compellable to give evidence," without noticing the exceptions in the 4th section, of proceedings for adultery, and actions for breach of promise of marriage. At p. 405-6, Mr. Cox commits an error, into which many more eminent persons have fallen, that "in *civil* causes, the party on whom the burthen of making out the affirmative lies, begins by addressing the jury." This is only a general rule; where there is a presumption of law, or a strong presumption of fact, in favour of the affirmative, the burthen of proof is cast on the opposite party, as it also is if the negative matter lies within the peculiar knowledge of that party. (See *Best on Evid.*, § 639, 3rd ed., and *Taylor on Evid.*, § 350, 4th ed.) The correct doctrine is, that the party begins on whom the burthen of proof lies; besides which, it is not limited to *civil* causes. So, p. 551, that in criminal cases, if the accused calls witnesses to character only, the prosecutor is not entitled to reply; the truth being, that he has a right to do so, although it is not usual to exercise it. (See the authorities cited in *Best on Evid.*, § 264, 3rd ed., and *Taylor on Evid.*, § 361, 4th ed.) There is a worse error at p. 572. It is there stated, that "applications for restitution of conjugal rights, or for judicial separation on the grounds of adultery, cruelty, or desertion, may be made

either to the Divorce Court or to the Assize Courts;" for which the 20 & 21 Vict. c. 85, s. 17, is cited. But so much of this enactment as relates to the Assize Courts has been repealed by the 21 & 22 Vict. c. 108, s. 19.

And, lastly (although this is a very small matter), the name of the author of the celebrated "Treatise on the Principles of Pleading in Civil Actions," is "Stephen," not "Stephens," an error committed in several places. (Pp. 382, 393, 394, 512, 526).

These and similar errors, which must be looked on as "*formoso corpore naevi*," will, we trust, be corrected in future editions of this work, of which it is to be hoped there will be many; and in the meantime, we cordially recommend the present one to our readers.

EXTRACTS

FROM THE EXPLANATORY OBSERVATIONS PREFIXED TO THE FIRST REPORT OF THE COMMISSIONERS APPOINTED TO PREPARE A CODE OF SUBSTANTIVE LAW FOR INDIA.

(Presented to both Houses).

(Concluded from p. 335).

Another matter of great importance is closely connected with this subject, viz. how best to prevent the law from being overlaid with an accumulating mass of comments and decisions, an evil which no mode of framing the law itself can completely exclude. On this subject also, we think it useful to quote and adopt a portion of the observations contained in the letter of the authors of the Penal Code, already referred to:—

"The publication of this collection of cases decided by legislative authority will, we hope, greatly limit the power which the courts of justice possess, of putting their own sense on the laws. But we are sensible, that neither this collection, nor any other, can be sufficiently extensive to settle every question which may be raised as to the construction of the code. Such questions will certainly arise, and, unless proper precautions be taken, the decisions on such questions will accumulate till they form a body of law of far greater bulk than that which has been adopted by the Legislature. Nor is this the worst. While the judicial system of British India continues to be what it now is, these decisions will render the law not only bulky, but uncertain and contradictory. . . . But whether the present judicial organisation be retained or not, it is most desirable that measures should be taken to prevent the written law from being overlaid by an immense weight of comments and decisions. We conceive that it is proper for us, at the time at which we lay before your Lordship in Council the first part of the Indian Code, to offer such suggestions as have occurred to us on this important subject. . . . In civil suits which are actually pending, we think it, on the whole, desirable to leave to the Courts the office of deciding doubtful questions of law which have actually arisen in the course of litigation. But every case in which the construction put by a judge on any part of the code is set aside by any of those tribunals from which at present there is no appeal in India, and every case in which there is a difference of opinion in a court composed of several judges as to the construction of any part of the code, ought to be forthwith reported to the Legislature. Every judge of every rank whose duty it is to administer the law as contained in the code should be enjoined to report to his official superiors every doubt which he may entertain as to any question of construction which may have arisen in his

court. Of these doubts, all which are not obviously unreasonable ought to be periodically reported by the highest judicial authorities to the Legislature. All the questions thus reported to the Government might with advantage be referred for examination to the Law Commission, if that commission should be a permanent body. In some cases it will be found that the law is already sufficiently clear, and that any misconception which may have taken place is to be attributed to weakness, carelessness, wrongheadedness, or corruption on the part of an individual, and is not likely to occur again. In such cases it will be unnecessary to make any change in the code. Sometimes it will be found that a case has arisen respecting which the code is silent. In such a case it will be proper to supply the omission. Sometimes it may be found that the code is inconsistent with itself. If so, the inconsistency ought to be removed. Sometimes it will be found that the words of the law are not sufficiently precise. In such a case it will be proper to substitute others. Sometimes it will be found that the language of the law, though it is as precise as the subject admits, is not so clear that a person of ordinary intelligence can see its whole meaning. In these cases it will generally be expedient to add illustrations such as may distinctly shew in what sense the Legislature intends the law to be understood, and may render it impossible that the same question, or any similar question, should ever again occasion difference of opinion. In this manner every successive edition of the code will solve all the important questions as to the construction of the code which have arisen since the appearance of the edition immediately preceding. Important questions, particularly questions about which courts of the highest rank have pronounced opposite decisions, ought to be settled without delay; and no point of law ought to continue to be a doubtful point more than a few years after it has been mooted in a court of justice. An addition of a very few pages to the code will stand in the place of several volumes of reports, and will be of far more value than such reports, inasmuch as the additions to the code will proceed from the Legislature, and will be of unquestionable authority, whereas the reports would only give the opinions of the judge, which other judges might venture to set aside.

"It appears to us also highly desirable, that if the code shall be adopted, all those penal laws which the Indian Legislature may from time to time find it necessary to pass, should be framed in such a manner as to fit into the code. The language ought to be that of the code. No word ought to be used in any other sense than that in which it is used in the code. The very part of the code in which the new law is to be inserted ought to be indicated. If the new law rescinds or modifies any provision of the code, that provision ought to be indicated. In fact, the new law ought, from the day on which it is passed, to be part of the code, and to affect all the other provisions of the code, and to be affected by them as if it were actually a clause of the original code. In the next edition of the code, the new law ought to appear in its proper place."

Although the illustrations, we believe, will obviate many questions of construction, and will do much to fix the sense of the law, yet, undoubtedly, many cases will occur in which there will be a difference of opinion among judges as to what the law is. Room will still be left for doubts as to the meaning of rules, and also as to the right application of illustrations; and cases will no doubt arise, where the enacted law is silent; in all such cases the judges will be compelled to use their law-supplying power. It will, consequently, inevitably follow, if no measures are taken to prevent it, that the

enacted law will ere long be encumbered with a mass of comments and decisions; and although the number of chief courts has been reduced since the letter we have quoted was written, yet such is still the judicial system of India that probably many of those decisions will be opposed to others of equal authority.

We agree with the framers of the Penal Code in thinking, that for the prevention of this great evil, the enacted law ought, at intervals of only a few years, to be revised and so amended as to make it certain, as completely as possible, in the form of definitions of rules or of illustrations, everything which may from time to time be deemed fit to be made part of it, leaving nothing to rest as law on the authority of previous judicial decisions. Each successive edition, after such a revision, should be enacted as law, and would contain, sanctioned by the Legislature, all judge-made law of the preceding interval deemed worthy of being retained. On these occasions, too, the opportunity should be taken to amend the body of law under revision in every practicable way, and especially to provide such new rules of law as might be required by the rise of new interests and new circumstances in the progress of society.

We have also to suggest, for the due administration of the law under this code if adopted, that when cases of difficulty occur, no resort should be had to any other system of law for the purpose of authoritatively solving an ambiguity or supplying an omission, and that the judges must decide cases unprovided for by the code in the manner they consider most consistent with the principles of justice, equity, and good conscience.

In one matter of detail we would suggest an important departure from the course proposed by the framers of the Penal Code. It seems to us deserving of the consideration of your Majesty's Government, whether it would not be advisable that the reports which, according to that course, would be made to the Legislature in India, should not rather be made to the Government there, and be then transmitted to the Secretary of State for India, and that the new editions of bodies of law should be prepared in this country.

OFFICE OF LAND REGISTRY.

THE following GENERAL RULES AND ORDERS, dated the 6th July, 1864, have been issued by the registrar. We do not pretend to understand them, and therefore print them verbatim, and without comment; but we think it will be seen, that, as is necessarily the case in any public office, the formalities are pretty numerous, and the expense will be, of course, proportionate:—

As to Dispositions of Land on the Register completed at the Office under the 64th Section of the Act.

1. Upon any attendance at the office under the 64th section of the act, and the 25th of the General Orders of the 1st October, 1862, the applicant shall bring into the office the document proposed to be executed, prepared in one of the statutory forms. An affidavit of the identity of the conveying or disposing party as a registered owner shall be furnished. Such affidavit shall be made by a solicitor, unless the registrar shall for any reason think proper otherwise to direct.

2. If the registered owner shall not personally attend at the office, he must be represented by an agent duly authorised to execute the proposed document, who shall personally attend at the office. A power of attorney, prepared in the statutory form, authorising such agent to make the proposed conveyance or dis-

position, and an affidavit of the execution of such power of attorney, and of the identity of the person executing the same as a registered owner, and of the identity of such agent as the person named in the power of attorney, shall be left in the office. Such affidavit shall be made by a solicitor, unless the registrar shall for any reason think proper otherwise to direct.

3. A statement in writing of the terms in which the final entry of the document in the register is proposed to be made shall be prepared, and shall be settled by the registrar, and any objection made to such settlement shall be proceeded on in like manner as provided for by the 13th of the General Orders of the 1st October, 1862, with reference to the original registration.

As to Dispositions of Land on the Register by Document not testamentary, and not completed in the Office, under the 64th Section.

4. For the purpose of registration, the original document, and an affidavit by an attesting witness, if any, or, if no attesting witness, by some person verifying the execution thereof by the registered owner, and an affidavit made by a solicitor (unless the registrar shall for any reason think proper otherwise to direct), identifying the person executing such document with the person named in the register, shall be left in the office.

5. If the document proposed to be registered shall have been executed under a power of attorney, the power of attorney shall be produced, and if the registrar shall so direct, left in the office, and the execution thereof by, and the identity of, the registered owner, and the execution of the document by, and the identity of, the attorney, must be verified in like manner as provided by the second of these Orders.

Wills affecting Land on the Register.

6. Where the registration of any will, or of any estate or interest thereunder, is required, the person applying to register the same shall leave in the office a copy of the will or a memorial containing a copy of all the provisions in the will relating to or affecting the registered land; and the copy or memorial left in the office shall be examined and ascertained to be correct at the expense of the applicant, in such manner as the registrar shall direct, and the applicant, if required, shall, at the time of leaving such copy or memorial, or when required by the registrar, deposit in the office a sum sufficient to meet the expense of so verifying the same; the amount of such deposit to be settled by the registrar.

Memorials of Facts affecting Land on the Register.

7. Where it is required that any birth, marriage, death, descent, intestacy, or other fact, shall be entered in the register, the person desiring to register the same shall make an application for that purpose signed by him or his solicitor, and referring to a memorial signed in like manner, and left in the office, together with such application, and which memorial shall state the number of the estate on the register to which the application relates, and the fact or other particular to be entered in the register, together with the nature of the evidence in support thereof. Such evidence, and evidence of the identity of the person affected thereby as a person named in the register, shall be left in the office.

Memorials of Judgments, &c.

8. Where it is required that any judgment, Crown debt, order, decree, execution, or other liability, registered in the office of the senior Master of the Court

of Common Pleas, shall be entered in the register, the person desiring to register the same shall make an application for that purpose, signed by him or his solicitor, and referring to a memorial signed in like manner, and left at this office with such application; and which memorial shall contain the number of the estate on the register to which the application relates, and an official copy of the entry in the books of the said office of the Court of Common Pleas relating to such judgment or liability. An affidavit of the identity as a registered owner of the person whose estate is sought to be charged, must also be left with the application. On the satisfaction or discharge of any such judgment or other liability, a note thereof shall be entered on the register, on an application for that purpose, signed by the registered owner whose estate was charged by such judgment or other liability, or his solicitor, and on such notice being given, and evidence produced, as the registrar may require.

Transfer of Mortgages of Land on the Register.

9. Where land is entered on the register as subject to any mortgage, or any like charge upon the transfer or other dealing with such mortgage or charge, the person applying to enter the same in the register shall, in case there has been any dealing with, or transmission of, or interest created or arisen in, the same not appearing in the register, leave in the office a memorial or abstract thereof, and produce evidence to prove the title proposed to be entered in the register.

10. Where notice is given, in pursuance of the 77th section of the act, and 29th of the General Orders of the 1st October, 1862, the instrument referred to in such notice must be produced, and the case proceeded with in all respects as is by these Orders provided with respect to dispositions generally, unless the registrar shall for any reason think proper otherwise to direct.

Generally as to Land on the Register.

11. No entry shall be made in the register of any document before the stamps in respect of the fees payable under the 127th section of the act have been affixed on some document sent to, or lodged in, the office with reference to the proposed registration, and all expenses payable under any General Order have been paid or provided for.

12. Where the value of the land on the register affected by any document proposed to be registered, and on the registration of which an ad valorem fee is payable, does not appear from such document (the same not being a mortgage or charge), a statement in writing of such value, under the hand of some competent person, shall be left in the office, and the fee payable in respect thereof shall be thereupon paid upon the sum mentioned in such statement to be the value of the property. If such statement, however, shall not be satisfactory to the registrar as to the value, further proceedings shall be taken to ascertain the same, under the 35th and 36th of the General Orders of the 1st October, 1862, and such further fee shall be paid as the registrar shall thereupon direct.

13. A printed or written copy of every document proposed to be registered, and which by the act is required to be printed, must be left in the office, and when such copy has been examined with the original, under the direction of the registrar, and the original has been stamped or indorsed, as provided for by the 75th section of the act, the original shall be returned, on a proper receipt being given for the same.

14. All printed copies or memorials, or written copies or memorials, not by the act required to be printed, left in the office for registration, shall be

printed or written on paper of the same description and size as that on which bills in Chancery are required to be printed.

15. In case no printed copy of any document required to be printed shall be left in the office, a sum sufficient to meet the cost of printing shall, at the time of leaving the document for registration, be deposited in the office, the amount of such deposit to be settled by the registrar.

Production of Land Certificate on Transfer.

16. Where a land certificate has been issued, to the possession of which the registered owner whose interest is proposed to be dealt with is entitled, the same must be produced to the registrar, or the non-production thereof satisfactorily accounted for, before the registration of any proposed dealing with the property is completed.

Completion of Registration.

17. The evidence to be produced of the execution or signature of any document proposed to be registered, and of the identity of any person, and otherwise in support of any proposed registration, shall be such as shall, in the judgment of the registrar, be satisfactory; and when the registrar is satisfied therewith, and that the several other matters required by the said act and by General Orders made thereunder to be done prior to registration have been done, he shall forthwith complete the proposed registration.

The Register.

18. The registrar may keep the books of the register in such manner that the entries therein shall from time to time shew only the estates, rights, powers, interests, charges, and incumbrances, exceptions, qualifications, and conditions, for the time being, appearing from the register to be subsisting or capable of taking effect in the land registered under the number to which such entries relate, and for that purpose may from time to time withdraw from the register, by cancellation, any official note or entry.

19. When any document is received for registration, an official note of reference to the same shall be forthwith made in the "record of title," or "register of incumbrances," as the case may require, which shall consist of a reference to the document, and the date when it was received, and the registration thereof when completed shall bear date in accordance with such note. But if the applicant shall not complete the registration within such time as the registrar shall fix for that purpose, the registrar may cancel such note.

20. Where any registered land shall become divided by means of any absolute transfer, the registrar may make up a separate record of the particulars of the part so transferred, and the subsisting estates, rights, powers, interests, charges, and incumbrances, exceptions, qualifications, and conditions therein, distinguished by a separate number, and the part so transferred shall thenceforth be registered as a separate estate. In case of such separate registration, any map of the land deposited in the office shall, at the expense of the applicant, be altered in such manner as the registrar shall direct, so as properly to distinguish thereon the part of the land so transferred, and separately registered.

21. In every case of a dealing with a part only of any land on the register, the registrar may require such maps of such land to be made and lodged in the office, at the expense of the applicant, as he may think fit, and the 7th and 11th of the General Orders of the 1st October, 1862, shall in all respects apply to such maps.

22. Where, by reason of the division of or dealing with any land registered under a particular number, the description of the land then remaining registered

under such number shall, in the opinion of the registrar, be no longer correct or be unnecessarily complicated, and the registrar shall think that the same ought to be corrected, or that a new map thereof ought to be made, the registrar may, on the application and at the expense of the person seised, or entitled to the possession, of the land, correct such description, and may also cause such new map to be made and marked with the like number as the map deposited in the office; and such description so corrected, and such new map (such new map being first deposited in the office), shall thenceforth be the description and map of the land registered under such number.

23. Where land is subject by will to a charge of debts or legacies, the names of the creditors or legatees shall not be entered in the register unless the registrar shall think fit to do so, but the nature of the charge and the persons to raise the same shall be entered or described in the register.

24. Where moneys are payable to trustees having power to give receipts for the same, the names of the persons beneficially entitled to such moneys shall not be entered in the register unless the registrar shall think fit so to do, but the nature of the trust shall be shortly stated or referred to, and the names of the trustees shall be entered on the register.

25. The registrar shall enter all leases, and agreements for leases (not registered under the 26th section of the act), which are to be registered under the provisions of the act, in the "Register of Mortgages and Incumbrances;" but no under-lease or assignment of, or dealing with, the interest of the lessee, only under such leases or agreements, shall be entered in the register, unless the registrar shall think proper to make such entry.

26. The registration of any document or title under any number on the register shall not be deemed registration of such document or title, in respect of any lands not entered on the register under such number.

Examination of Married Women.

27. When any married woman is to be examined under the 115th section of the act, in the case of any application to the Office of Land Registry, such application shall be in writing, and the examination of the married woman shall be made after such application is prepared; and in the case of any consent to be given by any married woman, or of any act to be done by her, or of her becoming a party to any proceeding in the office under the said act, the matter or thing to which her consent is to be given or the act to be done by her, or the proceeding to be taken, shall be reduced into or stated in writing before such examination be made, and the persons by whom such examination is made shall certify the result thereof to the satisfaction of the registrar. Such certificate may be to the effect following; that is to say,—

"These are to certify that on the — day of —, 18—, before us —, two of the perpetual commissioners appointed for the county of —, for taking the acknowledgments of deeds by married women, pursuant to an act passed in the 3 & 4 Will. 4, intitled 'An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance,' appeared personally —, the wife of —, and produced a paper writing marked (), bearing date the — day of —, and identified by our signatures. And we do hereby certify that the said — was, at the time of her producing the same paper writing, of full age and competent understanding, and that she was examined by us apart from her husband, touching her knowledge of the contents of the said paper writing, and of the nature and effect of the [application or other act according to the effect of the pa-

per writing] therein mentioned, and that we ascertained that she was acting with respect thereto freely and voluntarily."

The paper writing mentioned in the certificate identified by the signatures of the commissioners making the examination; and the certificate, and a declaration or affidavit verifying the certificate, and the signatures thereto of the parties by whom the same shall purport to be signed, shall be lodged in the office.

Such declaration or affidavit may be to the following effect:—

"I (A. B.), of —, in the county of —, [make oath and say],—

"That I know —, the wife of —, in the certificate hereunto annexed mentioned, and that the said certificate was signed by —, of —, and —, of —, the commissioners in the said certificate mentioned, at —, in the county of —, in my presence.

"That to the best of my knowledge or belief, neither of the said commissioners is in any manner interested in the transaction giving occasion for such examination, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned."

(Sworn or declared, &c.)

Generally.

28. In case of death, or transmission or change of interest, pending any registration, the proceedings therein shall not abate, but shall be available to the heir, devisee, grantee, or assignee, if he shall think proper to adopt the same.

29. Wherever the word "solicitor" is used in these Orders, the words "attorney or certificated conveyancer" shall be deemed to be included; and the word "affidavit" shall include "statutory declaration."

COUNTY COURTS.

The Business of the County Courts 1855, 1859, 1860, 1861, 1862, and 1863, is thus shown:—

	1855.	1859.	1860.	1861.	1862.	1863.
Number of Plaints entered	538,169	714,623	782,384	903,875	847,288	799,254
Sued for	£1,495,605	£1,754,971	£1,882,047	£2,168,337	£2,006,680	£1,842,749
Judgments entered for	—	£851,732	£902,799	£1,076,556	£1,000,223	£939,576
Costs, exclusive of Fees	—	£37,628	£38,302	£43,418	£40,137	£39,164
Fees	—	£215,623	£226,738	£227,148	£270,641	£263,400
Fees (1855) before Reduction	£228,720	—	—	—	—	—
Judgments for Plaintiffs	—	285,984	296,719	342,530	259,400	252,344
Ditto by Consent	—	137,978	151,851	191,328	187,646	171,168
Ditto by Default, 18 & 19 Vict. c. 108, s. 28	—	588	814	1,003	1,128	832
Nonsuits	—	8,861	8,867	9,827	10,170	8,898
Judgments for Defendants	—	9,089	9,175	9,449	9,107	9,068
Plaints above 20l.	8,604	N. B.	8,911	10,442	8,368	7,662
Judgments in ditto	—	3,631	3,855	4,731	3,804	3,513
Juries	685	988	894	923	860	877
Writs of Certiorari	—	135	126	142	81	69
Orders to stay Proceedings	—	64	24	59	47	41
Judgment Summonses	59,990	118,872	112,318	130,254	122,285	119,713
Warrants of Committal executed ..	6,480	9,003	6,955	8,635	9,373	8,589
Ditto issued	14,967	27,284	22,399	26,066	26,757	27,861
Executions against Goods	74,081	98,589	109,366	129,140	131,760	129,922
— actual Sales	—	3,768	3,973	4,913	4,849	4,075
Appeals to the Superior Courts ..	37	20	17	17	19	15
Charitable Trust Orders	—	137	133	18	1	1
Protection Orders to Wives registered	—	719	611	631	532	501
Insolvency Cases heard	—	1,746	1,886	2,289	—	—
Bankrupts	—	—	—	—	3,975	3,849

N. B.—After the year 1856, the Fees on Judgment Summonses were reduced. These Summonses are issued on Judgments of past years, as well as in the year when a Judgment is obtained.

COURTS OF QUEEN'S BENCH, COMMON PLEAS, AND EXCHEQUER, &c.

	1858.	1859.	1860.	1861.	1862.	1863.
Writs of Summons	108,478	86,370	97,568	114,301	103,564	100,042
Ditto of Capias to hold to Bail ...	588	582	512	549	582	608
Appearances entered	26,201	23,762	26,582	29,100	27,043	27,084
Judgments	—	31,816	36,175	41,397	36,166	38,743
Cases entered for Trial at Westminster	—	2,209	2,069	2,327	2,255	2,251
Ditto defended	—	965	896	975	981	939
Executions of Fieri Facias	—	14,052	16,468	20,410	16,197	16,563
Ditto Capias ad Satisfaciendum ..	—	8,142	8,079	9,476	6,811	6,557
Verdict under 50l. in these Courts and on Circuit	—	—	—	—	738	710
Petitions of Insolvency filed	3,448	2,765	2,820	3,129	—	—
Bankrupts (London District)	580	440	557	460	3,524	2,949
Ditto, District Courts	763	479	628	574	2,164	1,672

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J J

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LONDON, SEPTEMBER 10, 1864.

As we remarked in a late number of *THE JURIST*, the recent discussions on the subject of reports have ventilated a vast number of crude and ill-considered notions, some written, but many more spoken, by men often of good abilities and fair legal knowledge, but without practical experience in the real work of reporting. One very common notion is, that the reporter ought not to publish cases the decision in which is clearly wrong, and every reporter has often been told by the counsel engaged in a cause that the decision is wrong, and ought not to be reported; indeed, a story is commonly related, that Lord Campbell, when asked to explain how it was that the law in the cases reported by him was so uniformly good, pointed to a large drawer full of cases never published as containing bad law. This story we venture to disbelieve; and if it is true, we maintain that Lord Campbell acted on an erroneous view of the functions of a reporter, which are simply to report what takes place, whether right or wrong; for, after all, right and wrong, in the absence of corruption or partiality, is only matter of opinion, and who is the reporter who sets himself up in judgment on the judge? Necessarily he is either comparatively young and inexperienced, or else he is a man who has failed in the profession, for no one would report who could be more profitably employed in business; and on what rational ground can such a man venture to set himself above a judge, who must have been a distinguished barrister, and whose opinion on a point of law would be worth that of half a dozen ordinary reporters?

The reporter must, then, reject this idea, and report every case of novelty or importance; and we now come to the manner in which this is to be done, as to which notions still more crude and ill-considered seem to prevail. For instance, a writer of merit, and a barrister in good practice, whose letter on the subject is annexed to Mr. Daniel's celebrated pamphlet, and whose opinion may, therefore, be supposed to be sanctioned by Mr. Daniel, lays down the following rules for reporting:—Every report is to contain—

1. The parties.
2. The nature of the pleadings.
3. The essential facts.
4. The points contended for by counsel.
5. The grounds on which the judgment is based.
6. The judgment, decree, or order actually pronounced.

Now, of these, 3 and 4 are, of course, self-evident; 5, we presume to mean what is termed the judgment; for unless the judge gives the grounds of his decision, we do not see how they can be supplied; but a little reflection and a very little experience would shew the other three rules to be inapplicable. As to 1, in not one case in ten are either the parties or the pleadings of the smallest consequence. Let us take, for instance, a very common case. A testator gives

several legacies, charging them on his real estate, which proves insufficient; a suit is instituted under which the property is sold, and after the cause has been several times before the Court, a question arises as to whether one of these legacies is vested or contingent. Now, there might be twenty or thirty parties to such a suit; it might have been abated a dozen times; and the statement of the parties and pleadings would occupy two or three pages, for no object whatever except to mislead the reader. Instead of inserting all of which we should submit that the proper way to report such a case would be, "This was a suit to administer the estate of A. B., and a question arose upon the following clause in his will, &c." As to the 6th rule, the decree or order in such a case would occupy whole pages, of which only one line, the declaration on the question, would be necessary. Of course, it will be answered, that in such a case the rules would not apply. Then they are not rules at all, and should not be given as such.

Again: reports are regarded in different aspects by different readers. There is—first, the general reader, who reads for the purpose of learning what are the tendencies of the judges, and what has recently been laid down as law—a class of readers which we suspect to be much less numerous than it was; for them, the reports should be brief, and even the judgment should be abridged. Secondly, the reader who wishes to quote the case as an authority, or to explain it away; for him, the report should be much more full, and the judgment, in particular, should be given at length. Lastly, there is the reader who has the same cause on appeal, or who is engaged in the same cause in another branch; for him, nothing can be too full, and he would wish the whole to be printed, parties, pleadings, decree, and all. Between these the reporter has to select; and we should say that he ought to suit something between the first and second classes of readers, and submit to be reproved for his deficiencies by the third class.

We now come to the discussion of what reports ought to be; we are compelled to put aside as unattainable at the present day such reports as those of Mr. Swanston and Mr. Russell, which are not only full, careful, and accurate, but in many instances contain notes more valuable than the case to which they are appended. How these reports were ever compiled, when there were evening sittings at the Rolls as well as morning sittings by the Lord Chancellor, and when each of these learned reporters had a considerable private practice, is a perfect marvel; we can only say, that "there were giants in those days." We must, however, observe, that there was then more encouragement to bring out a careful and good report. Though justice was slow, the cases were fully argued and the judgments well considered; and moreover, when there were but two sets of Chancery reports, a new number of reports was read, and the cases discussed, as if it was a new number of *The Quarterly*, whereas at present a reporter must, in two cases out of three, feel perfectly aware that no one, unless under the compulsion of a similar case, will ever read one quarter of what he has written. We need not remark how much more fa-

yourable the old system was to the production of lawyers in the profession, and, indeed, among the reporters. Swanston, Turner, Russell, Mylne, and Craig, all attained eminence in the profession, but since the establishment of the additional courts, and the appearance of five sets of reports, no reporter (to express our meaning without giving room for offence) has attained the rank of Queen's Counsel. Leaving, therefore, these reports as unattainable, a report, as we have them at the present day, should of course contain a statement of everything—parties, pleadings, and facts, which is material to make the question and the point decided clear and intelligible; and what is almost of equal importance, but is not equally attended to, should not contain anything which is immaterial. Immaterial statements are not only surplusage and unnecessary, but are positively wrong as tending to lead the reader astray, just as a problem in chess is considered improperly stated if it contains a single man more than is absolutely necessary for its solution. This rule is not always attended to by the learned judges, who, in stating the facts of the case in their judgments, will frequently state, for instance, the parties to a deed, and the devolution of the legal estate, when neither is of the smallest consequence to the right understanding of the case. The arguments are the least difficult, though the references to the cases cited are the most troublesome part of a report, and do not call for any remark. The judgment is, with rare exceptions (those of Lord Cranworth, for instance), the part of the case which requires most discretion, and is the most difficult to handle. With every respect for the learned judges in Chancery, we feel bound to say—and we never heard a difference of opinion on the subject—that the judgments of more than one of them, though able and sound (perhaps the most able and most sound), are extended to an unreasonable and unnecessary length; none but those who are in the habit of seeing the short-hand writers' notes can be aware of the length. Now, to curtail these, and to omit the numerous repetitions and immaterial statements which a learned judge has uttered, requires considerable judgment and courage; in fact, throws upon the reporter a duty which, though absolutely necessary, never ought to be thrown upon him. The remaining part of the report is the marginal note; and this, we submit, ought never (unless there are several independent points in a case) to extend beyond a very few lines. The value of a case is, in general, inversely as the length of its marginal note; and if for any reason it is necessary to give a case which involves many circumstances, the note should avoid the statement of them at length, and proceed by reference; for a long marginal note defeats its own purpose, and becomes useless, as the reader may as well refer to the case itself as to a long note of it.

In fact, the art of reporting properly is by no means easily learnt; and though it may not require a very high order of mind, it does require qualifications which are more rare than would be supposed, and any inexperienced person who attempted it would almost infallibly make a deplorable failure.

It is not very often that the decision of a bench of magistrates is of sufficient importance or significance to merit notice in our columns; but exceptions do sometimes occur, and a recent decision of the magistrates having jurisdiction over Duffield Wold may, we think, fairly be considered one of them. As reported in *The Eastern Morning News*, the case is as follows:—"Not attending church.—Isaac Watson, servant with Mrs. Harrison, Duffield Wold, was summoned before the Rev. G. S. Clare, the Rev. R. H. Foord, and Mr. J. Grunston, and charged by George Lyon, Mrs. Harrison's manager, with refusing to attend church on Sunday, being requested by his mistress to do so. The defendant was ordered to attend some place of worship, and pay the expenses, 9s. 6d."

We confess to being somewhat startled on reading the above paragraph. The idea, that hundreds of thousands of our fellow subjects, who are in the habit of attending neither church nor chapel, should be liable week by week to fine and imprisonment at the instance of any malicious, or well-meaning but illiberal, person, was anything but an agreeable one. We did not even derive much comfort from the option which the magistrates held out. If *compelled* to attend any religious service anywhere, we should feel too exasperated at the interference with our liberties as Englishmen, to care much whether the place of our incarceration were a cathedral or a conventicle, or whether the forms used, or doctrines taught, were Episcopal or Mormon. The prominent impression on our mind was, that the whole affair was morally, if not legally, an anachronism—a fragment of the polity and sentiments of the Tudor and Stuart eras, which by some unaccountable accident had been most inopportunately, in this year of grace 1864, revived out of a deathlike trance.

We have no statement as to the ratio decidendi, but can only surmise that the magistrates must have proceeded either on the statutes of the 1 Eliz. c. 2, and the 3 Jac. 1, c. 4, or on the ground that under the 4 Geo. 4, c. 34, or other statutes in *pari materia*, which confer jurisdiction on the justices over agricultural labourers, artificers, &c., in respect of their contracts, in those capacities they had power to punish Isaac Watson, as for a breach of his contract of service, or for misconduct or misdemeanour in service in not attending church according to the bidding of his mistress. Neither of the above-suggested reasons is, however, tenable; for the 9 & 10 Vict. c. 59 (of which the magistrates were probably unaware), repeals so much of the 1 Eliz. c. 2, "as relates to a person resorting to his parish church or chapel accustomed, or upon reasonable let thereof, to some usual place where common prayer and such service of God, as in such acts are mentioned, are used in such time of let upon Sundays and other days ordained and used to be kept as holydays, and to his then and there abiding orderly and soberly during the time of common prayer, preaching, or other service of God, there used and ministered;" and also repeals the 3 Jac. 1, c. 4, which conferred jurisdiction on a justice of the peace in reference to complaints of non-attendance at church. Neither would the fact of Isaac Watson being under

a contract of service as an agricultural labourer support the decision, and for the simple reason, that attendance at public worship is not incidental or ancillary to a contract of service in husbandry.

As not unfrequently happens in cases of harsh decision, the clerical element was largely developed in the constitution of the bench. We really wish that the clergy would confine themselves to their own speciality. The maxim "*usque tutor*," &c., applies with more than ordinary force to a clergyman assuming the magisterial office. In many points there is a diversity amounting almost to incompatibility in their respective functions; the excellence of the clergyman being, to a great extent, the weakness of the magistrate, and vice versa. How can the parishioners of a magisterial parson, or at least such of them as transgress human law, be expected, as, *ex hypothesi*, they are expected, to confide their errors and failings to him as an adviser and a friend, when the knowledge so acquired may deeply prejudice them, if, as is only too likely, they should be summoned to appear before him as a clerical magistrate.

Again: the tone of mind required for theological and legal pursuits differs widely; the rationalistic theologian, and the lawyer who is given to take things upon trust, are not generally considered favourable specimens of their respective classes—the latter, certainly, is not, and we venture to affirm never will be.

On the whole, while we appreciate the tender regard of the magistrates of Duffield Wold, for the soul of the benighted hind, Isaac Watson, we think that it is not likely to be benefited either by confiscating his hardly earned wages, or by compelling his bodily presence at church. We shall, also, in the absence of further information, and for the reasons above stated, continue of opinion, that the proceedings against Isaac Watson were not warranted by law, and that the summons ought not to have been granted, or if granted, should have been dismissed at the prosecutor's expense.

PROCEEDINGS ON APPLICATION FOR REGISTRATION WITH AN INDEFEASIBLE TITLE.

BESIDES the GENERAL RULES and ORDERS, which were printed by us last week, the following GENERAL ORDERS, DIRECTIONS, and FORMS have been issued from the office of Land Registry:—

Application for Registration.

"Application for registration of title shall be made in writing, signed by the applicant, or his solicitor on his behalf, and shall state the nature of the interest of the applicant, and a general description, in concise terms, of the property the title to which is proposed to be registered, and whether or not the applicant claims the mines and minerals. It shall also state whether the registration applied for is one with or without an indefeasible title." (1).

* The numerals in brackets denote that the rules after which they are placed form parts, under the like numbers, of the General Orders of the 1st October, 1862.

Forms of application for registration, and all the other

The following persons are, by the 4th section of the act, authorised to apply for registration of title, viz.—

1. The owner in fee-simple.
2. Persons who collectively are owners of the fee-simple, or have the power of acquiring the same.
3. Persons who have the power of appointing the fee-simple.
4. Trustees for sale of the fee-simple.
5. The owner of the first estate of freehold and first vested estate of inheritance.
6. Any purchaser of a fee-simple where his contract empowers him so to do, or the vendor consents.
7. Any person authorised by the Court of Chancery to make such application.

The same section also provides that "application may be made, although the estate of the person applying may be subject to charges and incumbrances."

The application should state several particulars of the property, including its actual or estimated quantity, as may be sufficient to connect it with that comprised in the abstract, to be delivered at the office.

The person desiring to register his title may effect such registration personally, or by a solicitor, attorney, or certificated conveyancer.

The following is a form of application by an owner in fee-simple, viz.—

"LAND REGISTRY.

"In the Matter of the Act of the 25 & 26 Vict. c. 53.

"[*Thomas Hopkins*] of [*Sevenoaks, in the county of Kent, farmer*], being the owner in fee-simple of certain lands in the parish of [*Tunbridge, in the*] county of [*Kent*], called or known as [*High Beech Farm*], containing by estimation [*150 acres*] or thereabout, and [*or but not*] the mines and minerals under the same, hereby requires the title to such lands to be registered as an indefeasible title, according to the terms of the said act.

"The address of the said [*Thomas Hopkins*] for service is [*as above*], [*or, if the application is made through a solicitor, at the office of such solicitor.*]

"Dated this — day of —, 18—.

"[*Signature of the applicant or his solicitor.*]"

If the applicant be not owner in fee-simple, the statement in the application must be altered according to his actual title.

"The application shall be left in the office, and on leaving thereof an appointment shall be made to attend the registrar thereon, who shall determine whether the application shall be proceeded with, and give any special directions he may think necessary for the prosecution thereof." (2).

The application may be left personally, or sent through the post, and if an appointment to attend the registrar be not made on leaving the application, notice will be sent to the applicant when attendance on the registrar is necessary.

On every warrant to attend the registrar, a stamp of 3s. must be affixed.

An abstract.

"Together with, or within such time after the date of the application as the registrar shall fix, an abstract of the title of the applicant shall be left in the office. Such abstract shall be in such form, and contain such information, and be prepared in such manner, in all

forms referred to in these directions, may be obtained in blank at the office of Land Registry, No. 34, Lincoln's-inn-fields, on application personally, or by letter.

respects, as the registrar shall from time to time approve or direct." (3).

Where necessary, the time for the delivery of the abstract will be fixed, according to circumstances, in each case. As a general rule, if not delivered with the application, it should be lodged as soon after as possible.

The abstract should be in such form, and contain such information, and be prepared in such manner as that furnished by a vendor to a purchaser, where there are no restrictive conditions as to the title contained in the contract for sale. A stamp of 10s. must be affixed on the abstract.

Abstracts left in the office will be permanently retained therein, unless the registrar shall otherwise direct.

Affidavit verifying Abstract.

"An affidavit satisfactory to the registrar shall be left with the abstract, to the effect that such abstract contains a true abstract of all deeds and writings within the period covered by the abstract, and a true statement of all facts and circumstances relating to or affecting the title to the property, and every part thereof, to the best of the deponent's knowledge, information, and belief, and setting forth the means and sources of such knowledge, information, and belief." (4).

The object of this affidavit is to shew that the abstract is a bonâ fide abstract of the title to the property, and that no document or circumstance affecting the title is kept back. It should be made by the applicant's solicitor or his clerk, or by the applicant himself, or such other person as can best depose to the facts, according to the circumstances of each case. In case of difficulty, the form of the affidavit will be settled in the office.

Swearing Affidavits.

"Affidavits, to be used in the office, may be sworn before the assistant registrar, or a commissioner appointed to take affidavits in the Court of Chancery. The registrar may, if he think fit, require evidence to be given vivâ voce before him, and that any affidavit shall be sworn before him. All affidavits shall be filed in the office, and office copies thereof be taken for use." (33).

A stamp of 1s. 6d. must be affixed to every affidavit sworn in the office, and 1s. to every exhibit verified by oath and marked in the office. A stamp of 2s. 6d. must also be affixed on filing any affidavit.

A statutory declaration may be made instead of an affidavit.

Schedule of Evidence.

"A schedule of all deeds, probates, pedigrees, certificates, receipts, and other documents to be produced in verifying the abstract and deducing the title, together with an exact copy or the original of every map or plan drawn on or referred to in any abstracted document, shall be left with the abstract." (5).

The object of this schedule is to prevent the expense and delay of having to make requisitions, and obtain replies on points of evidence the answers to which are already in the power of the applicant. This schedule must not be a list of the deeds and documents abstracted, but should only contain matters of evidence, certificates, declarations, &c., not set out or referred to in the abstract. No document abstracted should be inserted in this schedule.

A copy, or the original, of every map of the property which may be in the applicant's possession or power will be required to be produced, and should be left with the abstract.

Examination of Abstract.

"All abstracts and copies of documents deposited in the office shall be examined and compared with the original title deeds and documents, and all searches which shall be required to be made by the registrar in the course of the investigation and completion of the title, or with reference to the entry at any time of any title or estate on the register shall be made, by such person and in such manner as the registrar shall direct. Such further or additional abstract and copies of any deeds or instruments shall be made by the applicant and deposited in the office as shall from time to time be required. The costs and expenses of examining and comparing the abstract and copies with the original deeds and documents, and of all searches and all fees to be paid to any examiner of title or conveyancing counsel, shall be settled by the registrar, and be paid by the applicant." (9).

The original deeds and documents referred to in the abstract will be examined and compared therewith by some person appointed by the registrar for that purpose. They may be sent to the office for examination, or, if more convenient, may be produced in the country, or in any part of London. If they are lodged in the office they will, if possible, be examined by the officers of the office, and the fee payable to the office in that case will be at the rate of 5s. an hour. If they are not lodged in the office, or if it is not possible for the officers of the office to examine them, a person will be employed by the registrar to compare and examine them with the abstract, and the charges of the person so employed must be paid by the applicant. The amount will be settled by the registrar if the parties differ.

Examination of Title.

"The registrar shall direct the title to be examined and reported on by one of the examiners of title, or by one of the conveyancing counsel of the Court of Chancery." (10).

When the abstract has been found to be correct, it will be laid before such one of the examiners of title as shall be nominated by the registrar for the purpose. The fee to be paid to the examiner of title on the abstract will be the usual fee paid to conveyancing counsel, and must be paid by the applicant.

The opinion of the examiner of title will be returned to the registrar, and such requisitions as are necessary on the title will be sent from the office to the applicant or his solicitor for his replies; and any question on the requisitions will (unless referred into the judges' chambers) be decided by the registrar or assistant registrar.

"If at any time during the investigation of the title any question, or doubt, or dispute arise, the registrar may require notice to be given to any person interested in such question, or doubt, or dispute, to the effect that the same is to be brought before the registrar, at a time to be mentioned in such notice, for his consideration, and that such person may attend before the registrar at such time by himself, or his solicitor or counsel, and take part in the investigation and settlement of such question, doubt, or dispute. And, at the time mentioned in such notice, such person may attend accordingly, and take part in the discussion and settlement of such question, doubt, or dispute." (14).

The following is a form of the notice required viz. :—

"LAND REGISTRY.

"No. —.

"In the Matter of the Act of the 25 & 26 Vict. c. 53, and of the Application of A. B.

"TAKE NOTICE, that on the investigation of the title

to the lands in the parish of —, in the county of —, an application for the registration of the title to which has been made by A. B., of —, a question has arisen as to [here insert nature of question], AND TAKE NOTICE, that such question will be brought before the registrar, at the office of Land Registry, on the — day of —, at — o'clock, for his consideration, and that you may attend before the registrar at such time and place, by yourself, or your solicitor or counsel, and take part in the investigation and settlement of such question.

"Dated this — day of —, 18—.

"[Signature of the applicant or his solicitor.]

"To —, of —."

Proceedings under this Order are not taken except at the request of the applicant.

Under the 6th section of the act any question, doubt, or dispute as to any matter of title that may arise in the course of investigating the title may, if the applicant wishes, be referred to the judge of the Court of Chancery.

Maps and Description of Parcels.

"An accurate map or plan of the property shall be deposited in the office when directed. Such map or plan shall be made in such form, and on such scale, and in such manner in all respects as shall from time to time be directed, and shall contain the names of all the owners and occupiers of the lands bounding or immediately adjoining the property." (7).

"A full and complete schedule or description of the property shall also be made and deposited in the office at such time, and made in such form as shall be directed for that purpose. Such schedule or description shall contain, besides the full particulars of the property, all the boundaries thereof, together with the names and addresses of all the owners and occupiers of lands adjoining to, and forming the boundaries thereof, and the persons, other than owners (if any), receiving rents of such adjoining lands, so far as the same can be ascertained, and the name and address of the lord of the manor, if the lands are situate within or held of any manor." (8).

The word "occupiers" in these two Orders may be read as "tenants."

The map and description there referred to must shew the present actual state and condition of the property. They may be left with the abstract, and if not, notice will be given to the applicant of the time when the same will be required to be deposited. They will not in ordinary cases be required until after the title has been examined, and has been shewn to be satisfactory.

The map may be a copy of any recent and correct estate or parish map, or of the tithe map, if on a sufficiently large scale to insure accuracy. One series of closes round the boundaries of the property should, when practicable, be shewn upon the map, and the exact position of the boundaries claimed, whether centre or side of road, fence, stream, &c., or otherwise, should be defined on the map, either in writing or by initial letters. The names of the owners and tenants or occupiers of the adjoining lands should also be written upon the map. The map and description should refer to each other by numbers. Lands situated in different parishes should be distinguished on the map and entered separately in the description.

The tithe maps are lodged in the Map Department of the Copyhold Inclosure and Tithe Commission, No. 3, St. James's-square, S.W., under the charge of Lieutenant-Colonel Leach, R.E., the head of that department. Copies of these maps may be obtained

on application at that office, at a small cost*. If there be no map available of the property, it will be necessary that one should be prepared. In that case, as well as in all other cases where there may be any difficulty with reference to the map of the property, it will be desirable to seek the advice and assistance of Colonel Leach, on the ground both of economy and accuracy.

(To be continued).

* The cost of tracings of maps of ordinary rural districts varies from 1s. to 2s. 6d. per 100 acres. If the tracing embraces a town or large village, or the area is small, an addition to this charge will be made in proportion to the increased labour of the draftsman.

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SEPTEMBER 17, 1864.

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NOTICE.

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THE JURIST.

LONDON, SEPTEMBER 17, 1864.

As the Divorce Court has now been in operation for nearly seven years, there has been abundant time to form an opinion as to the wisdom of the Legislature in passing the statute which created the Court, and as to the benefit which the facility afforded by it, of obtaining a dissolution of marriage, has conferred upon society. But in this, as in most other subjects on which important interests are involved, there will be found to be a wide difference of opinion. While all agree that if divorce is to be allowed, it ought to be practicable for the poor equally with the rich, and that the previous state of things was a virtual denial of justice to the poor man, and even to the man of moderate means, some will say that there ought to be no power of divorce, that death only should dissolve the marriage tie; others will say that the establishment of the Court was a most expedient measure, and that the increased facility of obtaining a dissolution of marriage and the publicity of the proceedings, operate as a warning and terror to those who would otherwise break their marriage vows.

It is, indeed, difficult to say that a husband should not be freed from an adulterous wife, or a wife from an adulterous and cruel husband; but when we consider the style of remark that is everywhere heard upon the proceedings of the Court, the levity with which the subject of divorce is discussed, and the constant publication of indecencies, which are proved in the cases before the Court, the mind does lean to the conclusion that these things should not be, and that it would be better that there should be no divorce than that adultery should become a subject of coarse joking and prurient curiosity—that it would be better there should be no divorce than that a woman should commit adultery in the expectation and hope of being divorced from her husband and marrying the adulterer. It was said that the late learned judge of the Court expected a light place and easy work when he was appointed, and that he was amazed at the crowd of business, which would have overwhelmed a less able and diligent man. This crowd of work was originally attributed to the arrears of adulteries, and to the natural consequence of the creation of the Court—that those whose means had hitherto prevented them from putting in force the expensive method which previously existed, would seek relief in the new Court of Divorce; but these arrears have been now cleared off, and yet the number of cases rather increases than diminishes, and there seems no probability of a decrease. In fact, as the population increases, it can only be expected that the number of cases will increase in proportion; for reason as we may on the deterring influence of punishment and publicity which the Divorce Court creates, those influences only exist in theory. No one can say that the existence of the Court for the past seven years has had the effect of diminishing adultery. Those who support the present facility of divorce will naturally ask the question

whether, if it were abolished, a husband is to be tied for life to an adulterous wife, or a wife to an adulterous and cruel husband, and whether impunity would not promote the offence. Now, we think there is a great difference between the consequences of an entire dissolution of a marriage and a judicial separation. In the former case the wife looks to a future union with her paramour, and is led on by the hope of its taking place; in the latter, she would be separated from her husband and her children, and feel the bitter consequences of her sin, without being able to retrieve her character in any degree by a marriage with the adulterer or with any other man. Hard as it may be upon a husband not to be entirely free from such a wife, still it is the welfare of society that must first be considered; and we are inclined to think that it would be better to abolish divorce and to maintain judicial separation. The reflection that marriage is a tie for life might deter from adultery, and from the conduct—neglect or cruelty, or whatever it may be—that leads to adultery.

If, however, the facility of divorce, once established, can never be repealed, at least, the question whether it may not be wholesome and good for society partially to alter the law, deserves consideration; and we think it would be wise, at least, to repeal the 57th section of the statute (20 & 21 Vict. c. 85), which runs thus:—"When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when, in the result of any appeal, any marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death; provided always, that no clergyman in holy orders of the united Church of England and Ireland shall be compelled to solemnise the marriage of any person whose former marriage may have been dissolved, on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnising, or refusing to solemnise, the marriage of any such person."

If this section were repealed, and the parties convicted of adultery could not intermarry, there might be a strong inducement on the part of the wife to abstain from conduct which condemns her to hopeless shame. Such intermarriage is forbidden by the law of Scotland, and by the law of France. The section was earnestly discussed when the bill was passing through Parliament, and most powerful arguments urged, but in vain, against it. Still there is no reason why it should not be struck out of the statute. We cannot but think that ere long the state of the law of divorce, and the effect the Court has had upon society, will be considered by the Legislature. In order to supply the proper materials for such consideration, that should be done, which, it is surprising to say, has not yet been done—there should be statistics of the proceedings of the Court, the number of cases in each year since its institution, the rank in life of the parties, and especially the number of wives convicted of adultery, who, by reason of having had settlements made

upon them, were, to a certain extent, independent of their husbands, and so free from the fear of want if their marriage was dissolved. We have heard it said that there have been many cases of this kind; and although a later statute gives the judge power over a settlement where there are children, he cannot deal with it where there are none. There might be no means of ascertaining in how many cases the wife has intermarried with the adulterer, but we do not think we are wrong in saying that they are numerous.

With these statistics before them, the Legislature might form an opinion upon the operation of the Court on the interests of society, and on the question whether the law requires alteration. The subject is of such vital importance that we trust these statistics will be collected and seriously considered. Everybody will admit that a husband or wife ought, to a certain extent, be relieved from an adulterous partner; but the question is, whether the impossibility of obtaining that absolute relief, which enables the parties to remarry, might not act in many cases as a check. Whether in fact a judicial separation should be the utmost amount of relief which could be obtained.

Whether or not the law is ever altered in this respect, we think there is another point on which it requires to be reviewed, namely, the subject of condonation by a wife. The recent case of *Hopley v. Hopley* must have attracted the notice of many of our readers, and suggested the thought that it was hard upon the wife to treat her conduct, under the peculiar circumstances of the case, as amounting to a condonation of the cruelty. The doctrine of condonation, as applied to the wife, is, no doubt, totally different from that which is applied to the husband; great allowance is made for the situation in which she is placed—perhaps, not having the means of leaving her husband, often unwilling to push matters to extremities, or unable to force herself to part from her children. All these considerations are taken into account on the question of condonation by the wife; and it may be urged, that unless there is to be no such thing as condonation on her part, the latitude which the law allows at present in her favour is quite sufficient, and ought not to be increased, because in this or that particular case, a jury have come to a wrong conclusion upon the evidence. But the case to which we have alluded, shews that there may be apparent proofs of forgiveness of cruelty by the wife, but that it is impossible to believe them to be sincere, and that the fact of her seeking a judicial separation shews that they were not sincere. Long delay in applying to the Court, if unexplained, should, no doubt, deprive her of her remedy; but we question whether any other acts on her part, even those which are usually treated as proofs of affection, should be a bar.

SINCE the publication of the article in the last week's JURIST, we have learnt, from a correspondence on the subject between the Marquis Townshend and Sir George Grey, published in *The Daily Telegraph*, of the 5th instant, that the proceedings were taken under the 4 Geo. 4, c. 34.

This statute, even when legally and properly interpreted, is sufficiently harsh, and is capable of being made an engine of great oppression, but this novel application of it is one for which the magistrates, and not the act, must be held responsible. The 3rd section enacts, "that if any servant in husbandry, or any

artificer, . . . potter, labourer, or other person, shall contract with any person or persons whomsoever, to serve him, her, or them for any time or times whatsoever, or in any other manner, . . . having entered into such service, shall neglect to fulfil the same, or be guilty of any other misconduct or misdemeanour in the execution thereof, or otherwise respecting the same, . . . it shall be lawful for any justice of the peace of &c., and such justice of the peace is hereby authorised and empowered, upon complaint thereof made upon oath, . . . to issue his warrant for the apprehending every such servant in husbandry," &c. It is clear, that the words "other person," following the classes specified, apply only to persons following occupations of a similar description; domestic or menial servants are not within the act. (See *Jones v. Williams*, 3 B. & Cr. 762). In our opinion, the contract, the non-performance of which, or the misconduct or misdemeanour in relation to which, is relied on, must be a contract having special reference to service in some of the employments mentioned in the act; and the duty, the breach of which is to be punished by the justices, must be a duty properly arising out of a contract for service in such employments, and have some clear and natural relation to it, and not be something merely collateral. Attendance at church, however important, being a matter totally distinct from the duty of an agricultural servant, as such, towards his employer, we regard the question of there being or not being at the time of the hiring an express stipulation for Isaac Watson's attendance at church as totally immaterial.

CASE OF LANDLORD AND TENANT.—At the Judges' Chambers on Tuesday, the 14th, Mr. Chitty applied on the part of Frederick Insoll, a prisoner in Hereford Gaol, to put in bail to prosecute an appeal at the quarter sessions, under extraordinary circumstances. Insoll was a bankrupt, and a tenant of a Mr. Masfield; he removed his goods away from the place, and was summoned before justices in petty sessions at Ledbury, and committed under the act of the 11 Geo. 2, passed in 1738, for two months, for fraudulently depriving the landlord of his rent by distress. He stated that he was a bankrupt, and protected: on which the justices held, that he had no goods to distrain upon, and committed him for two months, although the act stated, that an offender should be committed for six months to hard labour. The commitment was made on the 11th August, and on the 30th August an application was made on his behalf to Mr. Justice Shee, on the ground that the commitment was bad. His Lordship, however, refused to interfere, and the facts were brought under his notice on an application to put in bail to prosecute an appeal. Mr. Butterworth, on the other side, contended that the application was made too late, and under the act in question, the order having been executed, and the time more than half expired, it could not be granted. Mr. Chitty said an application had been made to the justices a few days since, and they held, it was "too late." He, however, contended that, under a case he cited, an application might be made before the expiration of the imprisonment. It was a monstrous case, and, according to a recent case which had been reported in the newspapers, a bankrupt was entitled to his protection from a debt, and the commitment could be got rid of by paying a sum of money. Mr. Justice Shee considered the act of Parliament and the authorities cited. His Lordship held, that as the order had been executed, he could not interfere. Mr. Chitty intimated that other proceedings would be adopted in the matter.

PROCEEDINGS ON APPLICATION FOR REGISTRATION WITH AN INDEFEASIBLE TITLE.

(Continued from p. 355*).

The following form of schedule or description is now generally used in the office:—

"No. ———.

LAND REGISTRY.

See the 8th of the General Orders In the Matter of the Act of the 25 & 26 Vict. c. 53, and of the Application of ———.
of the 1st October, 1862.

DESCRIPTION of the LANDS forming the Estate known as ———, in the Parish of ———,
and County of ———.

Numbers on the Map sent to the Office.	Numbers on Title, Inclosure, Parish, or other Public Map.	Names of Farms, and Names and Description of Closes.	Area in Statute Measure.	Names and Addresses of Tenants or Occupiers.	Under what Lease or Agreement held, and the Date, and for what Term.	Name and Address of Tenants or Occupiers, Owners, and Persons (if any) other than Owners to whom Rent is paid, of Lands bounding the Estate, to be inserted opposite Closes which adjoin the Boundary.			Remarks.
						Tenants or Occupiers.	Owners.	Person, if any other than Owners, to whom Rent is paid.	
			A. R. P.						

NOTE.—If any part of the estate to be registered, or any part of the adjoining boundary land, is held of, or situate within any manor, the name and address of the lord should be given. Lands held under different titles, or situate in different parishes, should be kept distinct. Mines and minerals, if claimed, should be specifically mentioned or described. If the property consists of houses in towns, the names of the street and numbers should be given. All rights of way and water, or other easements, disputed boundaries (if any), or any matter of liability affecting any of the lands to be registered, should be stated.

[Signature of the applicant or his solicitor.]”

The description of the land furnished by the applicant must be satisfactorily identified with the parcels or description contained in the title deeds, pursuant to the 10th section of the act, and must, if required by the registrar, be verified by oath, under the 8th section.

Surveys and Notices.

“The registrar may require that the description, quantities, and boundaries of the lands, and the accuracy of any map or plan, be investigated and ascertained by some person nominated and appointed by himself, who shall, at the expense of the applicant, make such surveys, and such investigations and inquiries, on or in the neighbourhood of the lands, or otherwise, as the registrar shall require. Such notices shall be given of such surveys, investigations, and inquiries, in such form and to such persons as the registrar shall direct, and the applicant shall pay the expenses of such surveys, investigations, and inquiries, to such person, and in such manner, and to such amount, as the registrar shall from time to time direct.” (11).

This investigation, which will in no case be required before the registrar is satisfied with the title, is to avoid encroachment upon the lands of adjoining owners. For this purpose, the assistance of the Map Department of the Copyhold, Inclosure, and Tithe Commission has been obtained, and the map and description furnished by the applicant will be sent to that department, where they will be examined, under the direction of Colonel Leach, to ascertain that they correspond with each other, and accurately represent the property†.

Except in cases where the registrar shall think such a course unnecessary, a person will be sent to the property itself, to verify the boundaries, and to ascertain that they are accurately defined upon the map; and in that case, the applicant must provide some intelligent person, well acquainted with the property, to accompany the person making such investigation*. And to afford the owners and occupiers or tenants of adjoining lands, and the trustees of boundary roads, protection against encroachments, notice will generally be required to be given to them of such investigation, that they may attend to assist in verifying boundaries, and to give any necessary information; and notice will also generally be required to be given to the principal tenants or occupiers of such parts of the lands proposed to be registered as form the boundaries of the property. The notices must be prepared by the applicant, and after being settled in the office and stamped with its seal, should be served by him. Not less than seven days’ notice should be given.

hour, according to the time actually occupied. The time required will probably vary from a few hours to two or three days, according to the degree of care and accuracy with which the documents have been prepared by the applicant, and the extent and character of the property.

* The charge of the person making the investigation will not exceed the rate of one guinea per diem, and his actual travelling expenses. The time occupied will depend upon the character, extent, and intricacy of the property, the distance travelled to the locality, the completeness of the documents furnished, the diligence used by the parties interested, and the facilities and information afforded to the person employed. A compact rural property of 500 acres should not, under ordinary circumstances, occupy more than one or two days.

* By a mistake in our last number, the folio was printed 585 instead of 365.

† The expense of this will be after the rate of 2s. 6d. per

The following is the form of notice of survey used in the office, viz.:—

"Notice of Survey.

"LAND REGISTRY.

"No. —.

"In the Matter of the Act of the 25 & 26 Vict. c. 53, and of the Application of [Thomas Hopkins, of Sevenoaks, in the county of Kent, farmer.]

"Take notice, that the registrar has directed a surveyor to attend on the — day of — next, on the [lands in the parish of Tunbridge, in the county of Kent, called or known as High Beech Farm.] at — o'clock in the — noon, to survey and perambulate the boundaries of the same for the purposes of registration under the provisions of the above act.

"And notice is hereby given to you, in order that you may attend the said survey and perambulation, and point out to the said surveyor the boundaries of the said property and any other matters material to the registration, to the end that such boundaries may be duly inquired into and correctly defined, and the property correctly represented by him in such survey and on the map of the said premises, to be settled for the purposes of registration.

"Dated this — day of —.

"[Signature of the applicant or his solicitor.]"

Services of Notices.

"All notices required by the act or these Orders to be served shall be under the seal of the office." (39).

For every notice under the seal of the office a stamp of 1s. must be paid.

"Services of notice through the General Post-office shall be deemed good service, if the registrar shall so direct." (40).

If the service be personal it must be proved by affidavit; it must also be proved that the persons served are in fact the proper parties. If the service be through the post-office, it should be made by registered letters, and in such case there must be an affidavit verifying the names and addresses of the persons to be served, and the fact that they fill the characters represented; and open envelopes, duly addressed, and containing notices under the seal of the office, should be left at the office for postage, together with the amount of such postage.

If there should be any doubt as to who should be served with notice, or if the persons should be very numerous, or there should be any other difficulty, the registrar will, on application to him, give the necessary directions for the service.

"Substituted service on the solicitor, attorney, or agent of any party shall be deemed good service on such party, if the registrar shall so direct." (42).

Map for Deposit in Office.

When the survey and investigation have been completed a fair copy of the map as settled, with a terrier containing the names and area, &c. of the several closes written on the margin thereof, will be prepared at the office of the Copyhold Inclosure and Tithe Commission for deposit by the applicant in the office, as part of the description of the property. Such fair copy map will, unless materially altered, in consequence of claims made after the advertisement of the intention to register the property so as to render a fresh copy necessary, ultimately be permanently deposited in the office as part of the description of the property*.

* The cost of maps on mounted paper, proper for this purpose, varies from 1d. to 2d. per acre; but if the map embraces a town or large village, or is of house property, or the

Particulars required by the 7th Section of the Act.

"The particulars required by the 7th section of the act shall be furnished by the applicant in writing, in such form as the registrar shall direct; and any objections made by the applicant to the settlement thereof by the registrar shall also be made in writing and left in the office within such time as shall be appointed for that purpose. On such objections being left an appointment shall be obtained for attendance before the registrar for his consideration thereof." (13).

The particulars under the 7th section should be furnished as soon as the registrar is satisfied with the title to the land, and the description and map have been settled and approved in draft. They will consist of—

1. The "exact description of the lands."

This should be prepared from the draft description, as the same shall have been previously settled by the before-mentioned investigation, and should in form consist of a general description of the property, with reference to the map prepared at the office of the Tithe Commission and deposited by the applicant in this office.

2. "A statement of the persons or classes or descriptions of persons (if any) that are or may become entitled, and of the estates, &c."

This statement should contain the particulars as the same appear from the investigation of the title, and are admitted by the applicant, or if any questions arising with reference thereto have been previously decided, then according as the same shall have been so decided.

3. "A statement of the mortgages, &c."

This statement should contain the mortgages, &c., as they appear from the investigation of title, and are admitted or have been decided to exist.

In the simple case of the applicant being the owner subject to a mortgage in fee, and claiming the mines and minerals, his wife being barred of dower by declaration, the particulars may be in the following form; in other cases the form must be altered to meet the particular circumstances:—

"Particulars under the 7th Section of the Act.

"LAND REGISTRY.

"No. —.

"In the Matter of the Act of the 25 & 26 Vict. c. 53, and of the Application of —, of —, in the County of —.

"The following are the particulars required by the 7th section of the above-mentioned act to be furnished to the registrar:—

"1. 'Description of the lands to be registered.'

"All those hereditaments called or known as —, in the parish of —, in the county of —, containing by admeasurement —, or thereabout, in the occupation of —, bounded on or towards [state the boundaries], and delineated on the map No. —, deposited by the said —, in the office of Land Registry as part of the description of the same hereditaments, and thereon edged with —, together with the mines and minerals under the same hereditaments.

"2. 'Statement of the persons or classes, or description of persons that are or may become entitled to such lands, and of the estates and interests that exist or

area is small, an addition to these charges would be made in proportion to the increased labour of the draftsman; and in cases of extraordinary or unforeseen difficulty, it is possible that charges somewhat larger than those previously mentioned may have to be made.

may arise or become vested in such persons respectively."

"The said — is entitled to the before-mentioned hereditaments for an estate of inheritance in fee-simple in possession, subject only to the incumbrance hereinafter mentioned.

"The said — was not married before the year 1834 to a wife now living, and has by deed declared that his widow (if any) shall not be entitled to dower.

"3. 'Statement of the mortgages, charges, and incumbrances affecting such lands, or any part thereof, and of the persons entitled thereto, both at law and in equity.'

"By deed, dated the — day of —, the — before-mentioned hereditaments were conveyed to —, of —, in fee, by way of mortgage, to secure the sum of — and interest, and the said sum, with some interest thereon, is now due to the said —.

"[Signature of the applicant or his solicitor.]"

Unless, in the description of the lands, the mines and minerals are expressly claimed, they will, pursuant to the 9th section of the act, be deemed not to be included in the property to be registered.

If the registrar shall not acquiesce in the particulars furnished, he will make such alterations therein as he shall think proper, and in that case, if the applicant shall object to the alterations, the course of proceeding is pointed out by the 7th section of the act, and the above Order.

The 7th section of the act provides, that any objection to the settlement by the registrar of the above particulars, if not allowed by the registrar, shall, at the request of the applicant, be referred to and decided by the judge of the Court of Chancery.

Security for Costs and Expenses.

"The applicant shall, when required by the registrar, secure the payment of any costs or expenses, by the undertaking in writing of himself or his solicitor, or by deposit of money, as the registrar may from time to time direct." (12).

Advertisements and Service of Copies.

"Before any title is registered, notice of the intention to register the same shall be given by advertisement in one London and one local newspaper at least, and in more newspapers if the registrar shall so direct, and also in colonial and foreign newspapers, if the registrar shall think it necessary or desirable. Such advertisement shall be repeated as often as the registrar shall direct. Such notice shall contain, besides the particulars required by the 11th and 12th sections of the act, such other particulars as shall be deemed necessary. Notice of the intention to register shall be served on such of the tenants and occupiers of the land as the registrar shall direct." (General Order, 15th January, 1865).

The 15th of the General Orders of the 1st October, 1862, has been cancelled, and the above Order has been made in substitution thereof.

"The form of such notices shall be settled and approved by the registrar before the same be advertised or served, and a tracing or copy of the map or plan of the land, or of any part or parts thereof, shall be attached to such notices for service, or any of them, if the registrar shall so direct. Satisfactory proof shall be given of the publication and service of such notices." (16).

When the statement under the 7th section has been settled, the notice to be advertised of the intended registration must be prepared by the applicant. The

11th section of the act provides that the registrar "shall require such notices as General Orders shall direct to be given, by public advertisement, of his intention to register such lands, with an indefeasible title at the expiration of a period of not less than three months from the date of such advertisement." And the 12th section enacts, that "such notice shall contain a copy of the description of the land, as proposed to be registered, and the names and descriptions of the applicants for registration;" and that "the notice shall also state the place, time, and manner at and in which any party may be heard to shew cause against such registration."

The following form of advertisement or notice is that now generally used in the office, viz. :—

"OFFICE OF LAND REGISTRY.

"No. —.

"In the Matter of the Act of the 25 & 26 Vict. c. 53.

"Notice is hereby given, that on the application of [Thomas Hopkins, of Sevenoaks, in the county of Kent, farmer], the registrar of the office of Land Registry intends, at the expiration of three calendar months from the date hereof, to register with an indefeasible title, all [those hereditaments called or known as High-beech Farm, in the parish of Tunbridge, in the county of Kent, containing by admeasurement 150 acres, or thereabout, in the occupation of William Brown], and delineated on the map, No. —, deposited by the applicant in the office of Land Registry, as part of the description of the same hereditaments, and thereon edged with — [together with the mines and minerals under the same hereditaments].

"If any person objects to, or desires to shew cause against, such registration, or claims that the same should be subject to any conditions or reservations, or that any particular estate or incumbrance, charge, or liability, not already proved or admitted before the registrar, should be entered on the register with reference to such hereditaments, such person may be heard at the office of Land Registry, No. 34, Lincoln's-inn-fields, at any time before the expiration of the said three calendar months from the date hereof, personally, or by his solicitor or counsel, or by affidavit or otherwise, to make such objection to, or to shew cause against, or to make such claim in respect of, such registration. But any person desiring to make such objection or claim, must lodge the same in writing, stating the particulars thereof, and with his name and address thereto, in the office of Land Registry, before the expiration of the said three calendar months from the date hereof, otherwise he will be excluded from making the same.

"The said map of the said hereditaments deposited in the office of Land Registry may be inspected at the said office at any time before the expiration of the said three calendar months from the date hereof.

"Dated this — day of —, 18—.

"[Signature of the chief clerk, and of the applicant or his solicitor.]"

The advertisement or notice, when prepared, must be left in the office to be settled by the registrar, who will direct in what papers it shall be advertised. Generally, it will have to be inserted once in one London and one local paper. The advertisement of the notice must be proved by the production of the newspapers containing the same, which should be sent to the office immediately after their publication. The notices for service, and the parties on whom such service is to be made, and the mode of service, must also be settled by the registrar, and application should be made to him for that purpose.

The 12th section of the act provides that "a copy

of such notice shall be served on every adjoining occupier; and the person (if any) to whom such occupier pays rent, and on the lord of the manor, in any case in which the lands are situate within or held of any manor, and also on every person, not having already had notice of the application, who shall appear to have or claim any estate or interest in or right over the land, or any part thereof, and on such other persons as under the special circumstances of each case shall be deemed necessary." The word "occupier" in this section may be read as "tenant." Service may, if the registrar think fit, be made through the general post.

Tracings of the boundaries of the property, so far as they affect the respective adjoining owners, will in most cases be required to be attached to the notices served on them. The tracings will be prepared at the office of the Tithe Commission.

All the notices provided for by the 12th section of the act must be prepared, settled, and served, and the service verified, in like manner as the notices of surveys.

(To be continued).

* For the cost of tracings, see ante, note, p. 355.

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THE JURIST.

LONDON, SEPTEMBER 24, 1864.

ALTHOUGH it does not often appear in legal reports, judges, not only those who court popularity, but the very best of them, are in the habit of reproving the suitors, and still more strongly their legal advisers, whenever the matter in dispute is trifling, or the amount in dispute small. No doubt, there is an appearance of reason in this habit, and the temptations to adopt it are strong. In the first place, the judge thereby places himself on a lofty Olympian pinnacle, whence he calmly surveys, and in the plenitude of his wisdom reproves the follies of those below him. In other cases, only one side is wrong; here both are wrong, and his superiority is incontestable. In the next place, it is a popular proceeding, and generally carries with it the sympathies of the audience; for, of course, the greater part of the blame falls on the legal adviser, and any censure of so unpopular a class is sure to meet with approbation and applause. Thirdly, both parties have, in all probability, been wrong in one sense of the word; that is to say, they have not consulted their own pecuniary interests, and so far the judge's position is unassailable. But when the matter is analysed, is it so certain that the judge is altogether right, and the suitors are altogether wrong? Of course, in the large majority of suits for small amounts the parties are influenced far more by passion than by reflection, and would have acted more wisely in submitting to the wrong, or fancied wrong; but even then they have been guilty of no moral delinquency; and what has the judge to do with the mere wisdom or folly of their conduct? He may hope by his administration of the law, and his reproof of evil-doers, to diminish moral delinquencies, but cannot hope to produce any effect upon the mass of human folly. Moreover, each party thinks himself to be in the right; and what business has a judge to tell a man who fancies himself, and who may prove to be, in the right, that he ought to have abandoned a just claim, or have given up the object unjustly demanded, sooner than bring his cause before the judge, whose duty and employment it is to deal with such matters? On the contrary, looking at the question from a judicial point of view, we should have imagined that a man would be considered to be doing his duty as a citizen in resisting injustice and promoting justice by all the means in his power; and if in so doing he incurs loss, he would be considered rather as a patriot than as an evil-doer. Whatever private opinion a judge may form as to the wisdom or folly of those who come before him as plaintiffs or defendants, how can he, sitting as a judge, blame them for having confidence in the law as administered by him? Is he prepared to lay down, that a man had better submit to any wrong, not utterly ruinous, than have recourse to the tribunals and judge, whose function it is to protect right and punish wrong?

It is commonly reported of a learned judge in the last century that he used to say, that sooner than in-

volve himself in legal proceedings he would give up a piece of his land, though claimed by a stranger who had no title whatever, provided that no one else knew anything of the transaction. And perhaps he would be right, under any existing or possible system of law, so far as his own immediate interests were concerned. It is, however, impossible to lay down any general rule on the subject, and in each case the party injured must judge for himself as to the expediency of resistance, by taking into account the amount of loss; and also the probable consequences of submission. But though the cost even of successful litigation may be ten, or fifty, or a hundred times as great as the amount in dispute, there are cases in which resistance would be unquestionably prudent or patriotic. No one, for instance, ever considered Hampden foolish for his obstinate resistance to the payment of a very small sum assessed upon him for ship money; and, as we have before observed, of all men a judge should be the last to denounce the prosecution or defence of a just right.

There remains, of course, the question as to the conduct of the legal advisers of the parties, who are frequently excepted from judicial censure in such cases, though, perhaps, more nominally than really. To the best of our belief, litigation is very seldom encouraged by the legal advisers in either branch of the legal profession. The barristers have very little to do with it, and the solicitors, even supposing no higher motives to operate, are, as a matter of fact, not so very fond of litigation, which frequently loses the client, from obvious reasons, when the litigation has been unsuccessful, and from wrath at the extra bill of costs when it has been successful. It is usually, however, supposed that the legal advisers could have stopped their clients, and no doubt in an enormous number of cases they could, and do so; and it is only in the few cases where they cannot that the matter comes before the judge. What, then, is the legal adviser to do when he believes his client to be right, but that the expense of the litigation would exceed the matter in dispute, and his client persists in going on? If it is the duty of a right-minded practitioner to refuse his assistance, he necessarily in all such cases drives the client to practitioners who are not right-minded—a result which can hardly be desired or aimed at, and the only alternative, therefore, is to go on after having fairly represented the case to his client.

We, therefore, come to the conclusion, that in no case ought a judge to find fault with the suitors themselves merely on account of the insignificant amount in dispute; and that he has no right to find fault with their legal advisers unless he has reason to believe that they encouraged, or did not discourage, the litigation.

PROCEEDINGS ON APPLICATION FOR REGISTRATION WITH AN INDEFEASIBLE TITLE.

(Concluded from p. 364).

Notice to Tenants and Incumbrancers.

Before or when any property is advertised for registration, notice of the intention to register must be

given also to the tenants and incumbrancers of the property, and such notices must be prepared, settled, and served, and the service verified, in like manner as the other notices before provided for.

The following are the forms of notices to tenants and incumbrancers used in the office, viz. :—

Notice to Tenants of Intention to register.

"LAND REGISTRY.

"No. ———.

"In the Matter of the Act of the 25 & 26 Vict. c. 53, and of the Application of [Thomas Hopkins].

"Take notice, that it is the intention of the registrar, on the application of [Thomas Hopkins, of Sevenoaks, in the county of Kent, farmer], to register the title to* [certain hereditaments known as Highbeech Farm, in the parish of Tunbridge, in the county of Kent, of which it is stated that you are tenant, under a lease dated the 19th June, 1860, for a term of twenty-one years from the 24th June, 1860, at the yearly rent of 200*l.*] And that if you claim any interest therein, other than as such tenant as aforesaid, you must lodge your claim† in writing, stating full particulars thereof, at the office of Land Registry, 34, Lincoln's-inn-fields, on or before the ——— day of ———.

"Dated this ——— day of ———, 18——.

"[Signature of the applicant or of his solicitor.]

"To ———, of ———."

"Notice to Incumbrancer.

"LAND REGISTRY.

"No. ———.

"In the Matter of the Act of the 25 & 26 Vict. c. 53, and of the Application of [Thomas Hopkins].

"Take notice, that on the investigation of the title to‡ [certain hereditaments known as Highbeech Farm, in the parish of Tunbridge, in the county of Kent], application for the registration of the title to which has been made by [Thomas Hopkins, of Sevenoaks, in the county of Kent, farmer], it appears that you are interested in such hereditaments under, or by virtue of §, [a deed dated the 2nd day of December, 1861, made between the said Thomas Hopkins of the one part, and William Brown, of Cheapside, in the city of London, stationer, of the other part, by which the said hereditaments were conveyed to the said William Brown in fee by way of mortgage to secure the sum of 1000*l.*, and interest.]

"And take notice, that it is the intention of the registrar, in registering the title to the aforesaid hereditaments, to register the same, subject to the aforesaid incumbrance; and that if you claim to have any interest in the said hereditaments other than under, or by virtue of, such incumbrance as aforesaid, and in respect of the moneys thereby expressed to be secured and now owing, or if the particulars of such incumbrance are not correctly stated above, or if, for any other reason, you object to such registration, you must lodge your claim or objection||, in respect thereof, in writing, stating the particulars of your claim or objection, at the office of Land Registry, 34, Lincoln's-inn-fields, on or before the ——— day of ———.

"Dated this ——— day of ———.

"[Signature of the applicant or his solicitor.]

"[To the above-named William Brown.]"

* Here insert short description of lands proposed to be registered, and of the interest of the particular tenant therein.

† N.B. The claim should bear the same number as this notice.

‡ Here insert short description of land proposed to be registered.

§ Here insert particulars of incumbrance.

|| N.B.—The claim or objection should bear the same number as the notice.

If the last-mentioned notices are not given before the advertisement is published, a copy of the advertisement should accompany every such notice.

Objections to Registration.

"If any person shall object to the registration, or claim that the same shall be subject to any condition, qualification, exception, or reservation, such person shall make such objection or claim in writing, and the same shall be signed by the person making the same, or his solicitor, and contain an address in Great Britain at which service on him shall be made, and such objection or claim shall be left at the office before the expiration of the time limited by the notice for such purpose. But the time for leaving such objection or claim may be enlarged by the registrar if he shall so think fit." (17).

The following are forms of objections and claims respectively :—

"LAND REGISTRY.

"No. ———.

"In the Matter of the Act of the 25 & 26 Vict. c. 53, and of the Application of A. B.

"E. F., of ———, hereby gives notice that he objects to the registration of the title to the lands known as ——— [or, in the occupation of ———, or otherwise identified], situate in the parish of ———, in the county of ———, notice of the intention to register which has been given by public advertisement [or served on him, as the case may be.]

"The nature of his objection is [here state nature of objection.]

"The address of E. F. for service is ———, in the parish of ———, in the county of ———.

"Dated this ——— day of ———.

"[Signature of the objector or his solicitor.]"

"Claim on Registration.

"LAND REGISTRY.

"No. ———.

"In the Matter of the Act of the 25 & 26 Vict. c. 53, and of the Application of A. B.

"E. F., of ———, hereby claims that the registration of the title to the lands known as ——— [or, in the occupation of ———, or otherwise identified], situate in the parish of ———, in the county of ———, notice of the intention to register which has been given by public advertisement [or served on him, as the case may be], shall be made subject to [here state the nature of claim.]

"The address of E. F. for service is ———, in the county of ———.

"Dated this ——— day of ———.

"[Signature of the claimant or his solicitor.]"

If any objection or claim, with reference to registration, shall be lodged in the office, notice thereof will be given to the applicant or his solicitor.

"The applicant or his solicitor, within such time as shall be appointed for that purpose, shall serve every person making any such objection or claim with a notice in writing, to the effect that the objection or claim will be heard before the registrar at the time therein mentioned, such time not being less than two clear days after service of such notice. The applicant or his solicitor shall obtain an appointment before the registrar for hearing the same at the time mentioned in such notice, and, on such hearing, the person making such objection or claim may appear, and be heard in person or by his solicitor or counsel." (18).

* N.B.—The objection should bear the same number as the number on the advertisement or notice.

† N.B.—The claim should bear the same number as the number on the advertisement or notice.

The following is a form of the notice required:—

"Notice to Objector to or Claimant on Registration.

"LAND REGISTRY.

"No. —.

"In the Matter of the Act of the 25 & 26 Vict. c. 53, and of the Application of A. B.

"Take notice, that the objection [or claim] lodged by you to [or on] the registration of the title to the lands known as [or, in the occupation of —, or otherwise identified], situate in the parish of —, in the county of —, is appointed to be heard before the registrar, at the office of Land Registry, on the — day^o of —, at — o'clock, and that you may attend before the registrar at such time and place, by yourself or your solicitor or counsel, and there and then shew cause, by affidavit or otherwise, in support of your objection [or claim.]

"Dated this — day of —.

"[Signature of the applicant or his solicitor.]

"To —, of —."

The notice must be prepared, settled, and served, and the service verified in like manner as the other notices before provided for.

The 13th section provides, "that the registrar may decide on such objection or claim, or may refer the same to the judge of the Court of Chancery." If the registrar decide, either party may appeal to the Court from his decision.

The 24th section of the act enacts, "that it shall be lawful for the registrar and for the judge of the Court of Chancery respectively, to order the costs and expenses properly incurred of any person properly appearing upon any proceeding taken under this act for the purpose of such registration to be paid by the applicant."

Reference to Court.

If any question is referred to the Court, the mode of proceeding is by summons in chambers, as pointed out by the 134th section of the act. The Master of the Rolls is the judge to whom the duties vested in the Court of Chancery in relation to the act have been assigned.

Caveats.

Before registration, the applicant must cause a search to be made in the register against caveats, and in case any caveat has been lodged with the registrar, the course to be pursued is pointed out by the 38th section of the act. The notice referred to in such section must be prepared, settled, and served, and the service verified in like manner as the other notices hereinbefore provided for.

The following is the form of notice:—

"Notice to Person lodging Caveat.

"LAND REGISTRY.

"No. —.

"In the Matter of the Act of the 25 & 26 Vict. c. 53, and Application of A. B.

"Take notice, that A. B., of —, in the county of —, has applied for registration of the title to the [insert description of land as in caveat], and if you intend to appear and oppose such registration, you are to enter an appearance for that purpose at the office of Land Registry, No. 34, Lincoln's-inn-fields, in the county of Middlesex, before the expiration of ten days from the day on which you are served herewith.

"Dated this — day of —.

"[Signature of the applicant or his solicitor.]

"To —, of —."

* N. B.—Not less than two clear days after service of notice.

Searches.

When the title is ready to be entered on the register, such searches for judgments, &c. must be made as the registrar shall think right. These searches will be made by a person appointed by the registrar for such purpose. The charge of such person for making the searches must be paid by the applicant. The amount will be settled by the registrar if the parties differ.

Oaths before Registration.

The 22nd section of the act provides, that "before the final registration of any land with an indefeasible title, the applicant, and his solicitor or agent, or certificated conveyancer, and such other person or persons as the registrar shall require, shall make oath that all deeds, wills, and writings relating to the title of the lands, or any part thereof, and all facts material to the title thereto, and all charges, liens, incumbrances, contracts, and dealings affecting the same, or any part thereof, or giving any right as against the applicant, have, to the fullest extent of their respective knowledge, information, and belief, been made known to the registrar."

Value for the Purposes of the 127th and 128th Sections of the Act.

"In the case of the registration of land, or of any transfer of land not upon a sale, and in the case of a land certificate, the value of the land shall, if required by the registrar, be stated in an affidavit made by or on behalf of the applicant, and may, if the registrar shall think fit, be ascertained by a computation made by him from the rental of the land, or by such other means as shall be satisfactory to the registrar, or may be settled by agreement between him and the applicant." (36).

The 127th and 128th sections provide for the payment of fees on the first entry of land on the register, and such fees have been fixed according to the following scale; viz.—

Property under 1000 <i>l.</i> in value, for every 100 <i>l.</i> - - - - -	£0	5	0
If under 5000 <i>l.</i> , for the first 1000 <i>l.</i> - - - - -	2	10	0
And for every 100 <i>l.</i> above - - - - -	0	3	0
If under 20,000 <i>l.</i> , for the first 5000 <i>l.</i> - - - - -	8	10	0
And for every 100 <i>l.</i> above - - - - -	0	2	0
If above 20,000 <i>l.</i> , for the first 20,000 <i>l.</i> - - - - -	23	10	0
And for every 100 <i>l.</i> above - - - - -	0	1	0

Fractional parts of 100*l.* are reckoned as 100*l.* Stamps to the amount of the fees must be affixed by the applicant, before registration, to the particulars, under the 7th section above mentioned.

Stamping Deeds on Registration.

"Where any of the muniments of title are in the hands of an incumbrancer, or other person not bound to produce the same, the consent of such person to the production of such muniments, and the stamping thereof, as required by the 91st section of the act, must be procured." (6).

The 91st section provides, that, before registration, the deeds and evidences of title produced to the registrar shall be stamped so as to give notice of the registration. Under this last section all the muniments of title belonging to the applicant, including those in the hands of incumbrancers deriving title through him, must previously to registration be produced at the office, and stamped accordingly.

AS TO LEASEHOLD ESTATES.

"Notice of every application to register a leasehold estate shall, where practicable, be given to the lessor or grantor, or his representative, and such notice shall be in such form, and shall be served in all respects as the registrar shall direct." (19).

The mode of proceeding for the registration of the title to leasehold estates will be the same as that before pointed out as to registration of indefeasible titles. As, however, no indefeasible title will extend to the title of the lessor or grantor, it will not be necessary to deduce such last-mentioned title. The notice to be given to the lessor or grantor, or his representatives, should be prepared, settled, and served, and the service verified in like manner as the other notices before provided for.

The 26th section of the act defines a leasehold estate, of which registration may be made, as "lands demised for terms of years, of which fifty years are still to come and unexpired, or demised for lives or for years determinable with lives, and in which two lives at least are still subsisting," and enacts, that "application may be made by persons having such estates and interests in the leasehold estates as are similar or corresponding to the estates and interests of the persons entitled to apply for the registry of freehold land."

AS TO TITLES NOT INDEFEASIBLE.

The form of the application for registration without an indefeasible title will be the same as that of the application for registration with an indefeasible title, *mutatis mutandis*. The evidence required by the 25th section of the act, and any other evidence by means of which the applicant purposes to satisfy the registrar of his title to be registered, should be lodged in the office. The before-mentioned provisions for ascertaining and identifying the lands will be applicable. No advertisements, however, of the intention to register will be necessary. It may be observed, with respect to applications for registration without an indefeasible title, that the registrar, in defining the period at which an indefeasible title shall arise, must be guided by the length of time during which the applicant shall shew that he has, or those through whom he claims have, been in possession as owner or owners in fee-simple.

The 25th section of the act is as follows:—

"Application for registration without an indefeasible title may be made by any person, subject to the following conditions:—

1. The applicant shall prove to the satisfaction of the registrar that he, or some person under whom he claims, has been in the actual enjoyment or receipt of the rents and profits of the land as owner of the fee-simple thereof, continuously and without interruption, for a period of ten years immediately preceding the time of such application:

2. The last deed or will (if any) under which the applicant derives title shall be produced to the registrar:

If the applicant claims as heir-at-law, evidence shall be given that the ancestor was in the enjoyment of the estate as owner thereof at the time of his decease:

3. The rules above enacted as to the description of the land to be registered shall apply, and the registrar shall adopt the same course, and take the same proceedings, for the purpose of ascertaining the accuracy of the description of the lands and of the boundaries thereof, as are hereinbefore directed with respect to registration with an indefeasible title:

4. A statutory declaration shall be made by the applicant and his solicitor or agent, or certificated conveyancer, and, if necessary, any other person whose evidence may be deemed necessary by the registrar, that they respectively believe the applicant to be, either alone or jointly with other persons to be named and de-

scribed (and subject to any qualification, condition, or exception, which shall be stated), well entitled to the fee-simple of the lands proposed to be registered:

5. If the land be registered, the registrar shall, in the record of title, define the time, event, or circumstances from and after which an indefeasible title shall attach: when the time has arrived, the event happened, or the defined circumstances exist, a judge of the Court of Chancery may, upon proof thereof, and if there be no other objection, after such and the like notices as are hereinbefore required in case of an application for registration of a title as indefeasible shall have been duly given, direct a transfer of the land to the register of estates with an indefeasible title, and thereupon the registrar shall make up a proper record of the title to such land, and the applicant and other persons named in such record of title shall have the same estates, rights, and privileges as if the land had been registered with an indefeasible title:
6. Subject to the enactments herein contained, the registration of any person as owner of land without an indefeasible title shall not prejudice any estate, right, or interest created or existing at or before the date of such registration."

LAND CERTIFICATE.

Every registered owner is entitled to a land certificate, being a copy from the register of all the entries thereon relating to his estate. A deposit of this certificate as a lien has the same effect as a deposit of title deeds has in the case of an unregistered title.

The fees on land certificates are payable on the following scale, viz.:—

Property under 1000 <i>l.</i> in value	-	-	£0	7	0
If above 1000 <i>l.</i> and under 5000 <i>l.</i>	-	-	0	15	0
If above 5000 <i>l.</i> and under 10,000 <i>l.</i>	-	-	1	0	0
If above 10,000 <i>l.</i> and under 20,000 <i>l.</i>	-	-	2	0	0
If above 20,000 <i>l.</i> and under 40,000 <i>l.</i>	-	-	3	0	0
If above 40,000 <i>l.</i>	-	-	5	0	0

For a form of a land certificate, see ante, p. 179.

RULES OF SUCCESSION AND INHERITANCE.

WE gave a few weeks ago (*ante*, p. 333) explanations prefixed to the Report of the Commissioners appointed to prepare a Body of Substantive Law for India. We now give a specimen of the first portion of the code as prepared by them.

1. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number, and words importing the male sex include the female sex.

2. The word "person" includes any company or association, or body of persons, whether incorporated or not.

3. Whenever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

4. The words "zillah judge," include judges of cities and other officers possessing the powers of a zillah judge.

5. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.

6. The age of majority shall, in all cases, be eighteen years complete.

7. Succession to the immoveable property of a person deceased is regulated by the law of India, wherever he may have had his domicile at the time of his death.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(a). A., having his domicile in India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in India; the succession to the whole is regulated by the law of India.

(b). A., an Englishman, having his domicile in France, dies in India, and leaves property, both moveable and immoveable, in India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of India.

8. A person can only have one domicile for the purpose of succession to his moveable property.

9. The domicile of origin of every person of legitimate birth, is in the country in which, at the time of his birth, his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A. his father was domiciled in England, A.'s domicile of origin is in England, whatever may be the country in which he was born.

10. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

11. The domicile of origin prevails until a new domicile has been acquired.

12. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in India merely by reason of his residing there in her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(a). A., whose domicile of origin is in England, proceeds to India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life; his domicile is now in India.

(b). A., whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service; A. has acquired a domicile in Austria.

(c). A., whose domicile of origin is in France, comes to reside in India, under an engagement with the Indian Government for a certain number of years; it is his intention to return to France at the end of that period, he does not acquire a domicile in India.

(d). A., whose domicile is in England, goes to reside in India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished; he does not by such residence ac-

quire a domicile in India, however long the residence may last.

(e). A., having gone to reside in India, under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in India; A. has acquired a domicile in India.

(f). A., whose domicile is in the French settlement of Chandernagore, is compelled, by political events, to take refuge in Calcutta, and resides in Calcutta for many years, in the hope of such political changes as may enable him to return with safety to the Chandernagore; he does not, by such residence, acquire a domicile in British India.

(g). A., having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent; A. has acquired a domicile in British India.

13. Any person may acquire a domicile in India by making and depositing in some office in India (to be fixed by the Governor-General in Council, or the Governor in Council, as the case may be), a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in India for one year immediately preceding the time of his making such declaration.

14. A person who is appointed by the government of one country to be its ambassador, consul, or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as a servant, or as part of his family.

15. A new domicile continues until the former domicile has been resumed, or another has been acquired.

16. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married, or holds any office or employment in the service of her Majesty, or has set up, with the consent of the parent, in any distinct business.

17. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

18. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

19. Except in cases above provided for, a person cannot during minority acquire a new domicile.

20. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

21. If a man dies, leaving moveable property in India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of India.

22. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

23. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so up-

wards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

24. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased, to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

25. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father, and those who are related to him through his mother; nor between those who are related to him by the full blood, and those who are related to him by the half blood; nor between those who were actually born in his lifetime, and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

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THE JURIST.

LONDON, OCTOBER 1, 1864.

WE may apply to the amount of legal reform which the law officers of the Crown have introduced in the session which has lately expired, Lord Westbury's own quotation in his judgment in *The Alexandra case* :—

"Quid dignum tanto feret hic promissor hiatus,
Parturiunt montes nascetur ridiculus mus."

Possibly the weakness of the ministry, and the overwhelming interest of the Danish question have rendered this puny result inevitable; but the first of these causes was in existence, and was well known to exist, when the ministerial programme was announced; and the second seems hardly to be a sufficient excuse for so melancholy a shortcoming. The introduction of measures of law reform, merely to withdraw them on the ground that there is no hope of passing them, is trifling with the subject, and leads men to think that these measures have been hastily taken up, and that as soon as they are exposed to daylight they are found to be full of fatal defects. The lamentable deficiencies in the Bankruptcy Act, 1861, ought to have prevented carelessness and want of due consideration in subsequent measures.

That it has not had this effect, we think, the "Act for Limitation of Actions and Process for Small Debts, and to amend the Acts relating to County Courts, and to confer on such Courts a limited Jurisdiction in Equity," is a decisive proof. Our readers will remember that it was proposed by the act to limit the period within which "any debt or money demand, not exceeding 20*l.*," could be recovered, to *one year* after the debt or demand, "or some part thereof," became due and payable. Now, a very little consideration would have convinced the framers of this act that it was a manifest injustice to confine the creditor to so short a space of time. The idea was scouted as soon as it was broached, and Lord Westbury immediately gave way to the more reasonable proposition of the other law Lords, extending the period of one year to three years. Then, again, no one could understand the meaning of the words "or some part thereof." In a previous article (*ante*, p. 199) we shewed the absurdity to which the introduction of these words might lead, and which, upon the smallest reflection, must have been palpable even to the framers of the act. This is only one specimen of the want of care and due consideration which characterise a measure containing much that was wise and salutary, and which would naturally have the effect of creating a prejudice against the entire bill. There was one clause in it which almost redeemed all its defects—the clause which in certain actions of tort enabled a judge either to compel the plaintiff to give security for costs, or to send the cause to the county court—an enactment which, if well worked, would have had the effect of stopping many actions which are brought for the mere sake of costs. We cannot help thinking, that if the framers of the bill had considered more carefully the nature of the pro-

visions which it contained, and the probability or improbability of their being accepted by the Legislature, they might have introduced a measure which would have passed through Parliament, and been a wholesome addition to the statute-book. It is to be hoped that the bill will be reintroduced next session, and that advantage will be taken of the suggestions for its improvement, which were made in the last. The Attorney-General stated in the House of Commons, on the 13th July, that such was the Chancellor's intention.

Another measure which has been discussed for several sessions, but which seems fated never to pass, is that for consolidating the law courts. The Attorney-General stated on the 23rd May, that it was not abandoned for the session, although he could not fix a day for bringing it on; but it was not brought on, and we suppose it will not be till a Chief Justice has been suffocated by the foul atmosphere of one of the present courts—most probably the Bail Court. Justice Mellor spoke out manfully last term against the dreadful inconvenience to which judges, jurors, and all persons who attended the courts, were exposed in the present state of the courts; and the same learned judge declined to expose himself or his fellow creatures to a premature death by sitting throughout the day in the Second Court of Queen's Bench at Guildhall. Mr. Montague Smith has also done good service by bringing the matter before the House of Commons, and calling their attention to the "buildings and sheds used for the superior courts of law and equity." The Attorney-General, in answer to him, hinted at certain interests which stood in the way of the measure, regretted the delay, and hoped soon to lay a bill on the table; a hope which, we trust, will not be satisfied simply by bringing forward a measure, and then withdrawing it. We cannot understand what difficulties can have stood in the way of a measure which everybody admits to be required, and which all professional men are longing for. Lord Lyndhurst is said to have defined a difficulty as "a thing to be overcome;" but those to whose hands reforms of the law are now intrusted seem to think a difficulty a sufficient reason for withdrawing a bill.

So much has been said by Lord Westbury about law reform, and so little has been done by him, that he must see his character is at stake; and we may, therefore, hope that the next session will witness some real earnestness in carrying out the measures which are introduced, and especially the two to which we have referred. Whoever may be Lord Chancellor, we trust he will take up these bills, and resolutely persist in passing them.

NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE.

Speech of Sir J. P. WILDE, 23rd September, 1864.

Sir J. P. WILDE said—The 7th February, 1828, was a memorable day in the annals of law reform. Then it was that the greatest orator of his age delivered his celebrated oration in the House of Commons, and laid open the sweeping changes which our law required. From that moment an impulse was given which has

not ceased to be felt. Interest was aroused, indignation excited for the errors of the past, and a basis laid on which to build fair hopes of the future. Since that time the progress of law reform has been unceasing, though gradual; and now, after thirty-six years, after the destruction of a host of anomalies, and the removal of barriers and obstructions, such as set justice at defiance, we find ourselves still engaged in the same work, and, singularly enough, under the guidance of the same hand. No one can rise from the perusal of that remarkable speech, and a contrast with the reforms actually since effected, without marvelling at the success with which the defects and weak points of our judicial system were hit upon and exposed; and it is not too much to say, that nine-tenths of the precise evils there indicated have been successfully met by the precise remedies there proposed. A glance at the subjects dealt with will serve to shew us both the benefits that we have reaped, and the evils from which we have escaped. It will further serve to stimulate us to successful labour in the same field. Having glanced rapidly at the principal changes recently effected, Sir James proceeded:—I wish to draw attention to the fact, that the whole of these changes have been confined to the procedure of the courts, and the method of applying the law, not to the body of the law itself. It is the double function of procedure to precede and follow legal adjudication, first ascertaining the facts in dispute, and then carrying into execution the decrees of the law upon them. It is, therefore, properly the machinery of the law. Now, in 1828 the avenues to justice were so choked with artificial obstacles, that approach was practically denied. Expense, delay, uncertainty—these three monster evils barred the access of the suitor, or terrified him into submission. The clearing of these obstacles, while it has opened the way to the speedy and certain administration of the law for the suitor, has brought the law reformer face to face with the body of the law itself. The question, then, forces itself upon us—is the law itself free from defects of a similar character to those which have disfigured its procedure? Can we boast of a judicature so logical, so free from entanglement and inconsistency, so clear and uniform, so harmonious and well-balanced, as to be worthy of our social progress, and equal to the mixed and multiplied wants of our age? Law means justice administered according to method; and in this justice should be paramount, and method subordinate. Good laws will work occasional hardships, for they should be unbending; but if well administered, never injustice, for their principle should be unerring. Every legal system must impose some forms upon the business transactions of life, but they should be as few as possible, lest from guides and supports they pass into fetters and trammels. The law should also be clear; because simple in its principle, though diffuse in details, and compact in form, because well collated, though compendious in grasp. How far can we conscientiously say that the common law of this country fulfils these ends? To what extent can it lay claim to simplicity, certainty, clearness, and unerring justice? Above all, what can we say of its compactness, whose principles wander at large through the pages of 300 volumes, and the leaves of whose oracles lie as they first fell, scattered and unsown? When we reflect on the history and growth of our laws, we have no need to be surprised or ashamed. The marvel is, that they contain so much worthy of admiration and homage. If they do not meet all our modern wants, to how many of them have they been gradually and insensibly adapted? Is it to be wondered at, if laws which sufficed in the time of the Plantagenets fall short in the present age? Bear in mind, that the

laws of this country have suffered no general revision from time immemorial. As the middle classes forced their way, as the wealth of land found itself emulated, if not surpassed, by the wealth of trade, as civilisation bore its universal fruit of complicated relations in life, the laws regulating these relations ought to have felt an equal progress. Provision should have been made by the Legislature for new requirements, and the obsolete constantly thrust out. But was this ever done? Did the change of our social condition at any period of our history carry with it a new system of laws framed by the Legislature for the new matter with which it had to deal? Was a fresh chapter from time to time added to our code to keep pace with the fresh chapters of history? Far from it. With the exception of the Statute of Frauds, the Statute of Limitations, and a few acts directed to very limited objects, the Legislature has laid no hand on the body of the common law. What wonder, then, that after the lapse of centuries legal procedure should have been found incompetent to the swift movements and varied terms of a community whose time had become wealth. And, in like manner, who would reasonably expect that laws which, originally highly artificial, were adapted to the time when nearly all property consisted in land should be unfit to pursue the complications of personal property and the intricate folds of trade? The gradual development which has turned a handful of military adventurers and a population of serfs into the wealthiest commercial community of the world, has surely called for the destruction of as much that was old and useless as the creation of what was new and requisite. What have been the means employed to this end? With rare exceptions, nothing but the judicial power. It has been left to the tribunals themselves so to mould old principles into new forms as to make them subserve modern uses. The law lying in no fixed code, but only in tradition and the records of its own application, was capable enough of being bent to new purposes and fashioned to new ends; and administered by powerful minds with great labour, and by a body of men drawn from no particular or favoured class, a structure has been raised, chiefly within the last century and a half, of which we may well be proud. But this fabric, like the political constitution of this country, has been a thing of very gradual growth. If any one doubts this, let him ask himself with what success he would be likely to search the Year Books or the pages of the old reporters for any authority in support of nine out of ten of the decisions to which a single term now gives birth. Let him ask himself with what probability of success he would search in the history of remote centuries for the incidents and combinations which now ask daily for judicial solution. Land, it is true, still exists, but how occupied and enjoyed? under what relations and conditions? to what ends and purposes, as contrasted with feudal days? Such reflections as these serve to shew how great a change must have passed over our judicature. A few further reflections may tend to shew with what inevitable defects. In saying this, I am far from the suggestion or belief that this gradual progress of the law, built up on old foundations, resting step by step on precedents reaching far back into remote antiquity, and thus bringing up to the surface the experience and wisdom of past generations, was altogether faulty in system, or void of invaluable features. It had, however, this capital defect, that the powers of the courts of law were constructive only; under the name of adaptation they could practically create; under no name could they destroy. But it was not enough to create, power was needed to abolish; it was not enough to build, unless timely clearance could be made of the

ruins and rubbish of past structures. Here it is, that, in my opinion, the system has broken down. This defect it was that choked the accessions of justice with empty forms and worn out expedients, and induced those vices of procedure which the labours of the law reformers of the last thirty years have scarce sufficed to remove. And this it is which still affects the body of our laws themselves, binding our real property in the clogs and shackles of feudal rights, and tainting the laws of personalty with analogies largely drawn from the same extinct system. Yes; the life, the body, and even the spirit of the feudal system has passed away, but the armoury of its weapons and defences is still cherished in our halls of justice. Let us examine our English system of law-making a little closer and observe the inevitable process. Did a new position arise for which the jurist had no precedent, analogy was resorted to. If no near analogy was at hand, a more distant one was sought; if none found in the region of similar rights, a more remote one, taken from a different class or branch, was often brought forward and bent, perhaps distorted, till it served the end. It might, perhaps, have been better to deal with a new class of cases as avowedly demanding an application of law, for which there was no precedent; and this has been sometimes, though more rarely, done. But it must be borne in mind that the Courts at Westminster had, in strictness, no power to make the law, but only to declare it. They had no alternative, therefore, between declaring the voice of the law to be absolutely silent, and adapting its recorded oracles, such as they were, to the case in hand as best they might. And thus the law has grown, professedly, indeed, drawing its decisions from its own inexhaustible stores, but in reality framing, adapting, creating as it went along. From this method both evils and benefits have flowed of a sufficiently remarkable character. It is no small benefit that, in a fresh application of legal principles to a new class of cases, there should be apparently mingled the element and the sanction of time. The decisions of the Courts being avowedly nothing more than enunciations of the pre-existing law, though in reality new determinations framed upon old principles, carry with them the veneration of tradition, while they embody the spirit of the time. It is another circumstance of value that the changes effected are gradual, and while they do not anticipate, yet keep pace with, the necessities of the day. Further: when any new subject engages the attention of the Courts, it is the peculiar feature of this system, that each step is taken separately, never exceeding the particular circumstances of the case, or aiming at generalities. Thus the law falls into shape as the subject becomes familiar; opportunity is given by the succession of each fresh example for contrast and reconsideration; the direction first taken is followed out, modified, or even reversed; limitations and qualifications make their appearance, and something like a general rule at length emerges, well suited to the actual exigencies from the experience of which it is drawn. If this is legislation, it is legislation of the best kind, for it is framed by those who have no popular interests to support, or collateral ends to attain, and who bring to the task carefully trained intellects, familiar with the subject in hand. The evils of the system are, perhaps, equally apparent. Invested with a power larger than avowed, the tribunals may be said to have too much or too little confided to them. If they frame new applications of the law, they are obliged to do so on old models only, and administer them under old forms. Tied down by the past, they are too little set at large to work out entire justice. Working in the trammels of tradition, they are driven to the resort of legal fictions. Found-

ing all decision on precedent, they are circumscribed and limited by the analogies on which their decisions are founded. The broad rule of right is but too apt to suffer in such circumstances, and full justice must needs be at times shorn down to obtain a footing on precedent. But the worst feature attending a law purely traditional is its incapacity to obliterate. Tradition is the expression of permanence; and if it perpetuates truth, it also embalms error. It renders what is really obsolete unquestioned, because it is familiar, and fences it from attack by giving it the immunity of age. Thus it is that many of the positions of our law pass without inquiry, though their justice might well be challenged. Now, let us compare this system of law-making with the more comprehensive system of a code adopted in most other countries. The attractions of the code are obvious, and its faults not so apparent. The object of both is alike to form a permanent frame for the action of justice. The chief point of contrast lies here—the framers of a code propound their principles in accord with justice, and, casting about in their minds to imagine the possible cases falling within them, adjust them accordingly, giving them expression in elaborated rules. The English system frames no rule in advance; looks backwards in place of forward, and substitutes the actual experiences of the past for the possibilities of the future. True, the future is not provided for in the latter, except so far as principles are gradually evolved, which make solution not difficult or unexpected when the case arises; whereas the former professes to make such provision. But is this provision ever made with success? Does any code really offer a text which, when applied to the circumstances of an individual case, at once, and without reasonable doubt, decides it? Let the innumerable decisions on some of the most celebrated codes answer the question. Take the *Ordonnance de la Marine* of Louis XIV. How simple and brief, and apparently plain, the text! Yet who ever read the ingenious commentaries of Valin or Boulay-Paty on any and every article of it without owning that the text was only plain because the difficulties of particular cases were not present to view, and only simple because their complications were excluded? The same thing is true of the codes of the French empire, and of all others which the world ever saw. The truth is, that the intricacies and complexity of possible combinations of fact are beyond the range of human conception, and any attempt to foresee and provide for them all beforehand, and dispense a ready-made justice with success, will give little reward to the labour it wastes. But a code resting on no detailed decisions or elaborated instances to expound it, has an especial evil of its own. There is no more fruitful source of doubt and litigation than the meaning of language. The careless use of language does much, but the inadequacy of language as the vehicle of precise thought does perhaps even more. What treaty, or code, or statute, was ever so framed that its meaning, in all possible contingencies, was free from reasonable controversy? Now, the especial evil of all codes and statutes is, that, over and above the difficulty of framing adequate principles, the ambiguities of construction are introduced. Expressed in certain definite language, its force depends upon the interpretation which ingenuity may give or deny it. And here the system of case law contrasts favourably, for its principles, enforced in every variety of language and under every turn of thought, shine out in their application rather than in their expression, and are further removed from the cavil of words. The most ardent lover of uniformity and symmetry would hardly be prepared, then, to surrender the treasures of our common law for the inevitable litigation

of a code; but does it follow that nothing can be done to render our system more uniform, and our jurisprudence more compact and harmonious? We have nothing in the English law between the succinctness of a maxim and the detail of an individual case. We have no declared body of rules, however general, and no set of collected principles, however broad. There are, no doubt, to be found, scattered up and down our reports, enunciations of general legal principles; but even they have never been collated or brought together, and their mutual dependence shewn by group or contrast. But in far the majority of cases decided no general principle is propounded. The principle is, indeed, there, guiding and controlling the decision; a silent appeal is made to it in the mind of the tribunal, but such is the jealous caution of the judicial mind, and so great the obstacles cast in the way of generalities by a system which calls only for the decision of the individual case, that broad rules are seldom or never laid down. Hence it comes that the cases containing the law on one particular branch or subject, are rarely appealed to in discussion of another branch or subject, though these may be cognate, and though the law ought to be, and probably is, in harmony with respect to them. No subject can be treated philosophically that is treated entirely in detail; and no system can promise harmony that is based on separate trains of independent thought. Is it not possible to amend our legal system in this regard? If it be considered not wise that the tribunal should do more than decide the individual case, and pledge itself, as it were, to an area of law wider than that occupied by the matter in hand—and this to preclude the possibility of prejudging difficulties not foreseen—still the law, as already settled, and to the extent to which it has already been actually applied, might surely be bound together and epitomised for the practical use of mankind. Is not this what, in fact and in practice, every well-read lawyer more or less does for himself? When a case presents itself to his mind for legal solution, does he instantly recur to some specific case forming a precedent, or does he not rather fall back upon the general legal principles with which his mind is imbued? Now, I hope I am not too sanguine in this; but I cannot resist the belief, that, within the bounds of reasonable labour and time, the general principles and broad bases on which our common law reposes, and which tacitly guide the decisions of our Courts, might be brought to the surface, grouped together, subordinated in their several relations, and contrasted in their differences. An attempt of the kind, and not without great success, was made by the late Mr. Smith, in his *Leading Cases*. And those who have studied the notes of that book will not fail to perceive how easily and with what success large groups of cases treated and handled together have been made to yield up short and succinct propositions of law. What I desire to see is a similar attempt made with authority, and on a much larger scale, to be finally confirmed by act of Parliament; but I do not conceal from myself that the first judicial minds of the country are alone adequate to the task; at least, in its ultimate stages, and that it is far beyond the reach of the unpaid services of occupied men. If such a result could be obtained, the benefits are not doubtful; to the student and the general public the vast area covered by the law would present a district set out in order, in place of a tangled thicket. The true bearing of each abstract proposition would stand out plainly, because side by side with others of a similar nature. Here, too, another great advantage would be reaped. As the decisions which have radiated from some central case came to be classed together, and their common principles with its qualifications and limitations extracted, all those of a

questionable soundness would come to be suppressed. That our books abound with such cannot be denied; and their expurgation by authority is an end of great importance. For, once entangled in them, the Courts are either led astray or only escape to the doing of justice by some refined distinction, which, in its turn, becomes a snare for the future. It is thus that error once committed under our present system is perpetuated. And decisions whose soundness is doubted for years continue for years to be the rule of judgment and the source of endless distinctions and refinements, until at last they are either trampled out by the reiterated dicta of the tribunals, or reversed in regular form by the courts of appeal. Many, too, are the instances of discordant decisions on identically the same subject, and it is not an uncommon remark, "That all the cases upon this subject cannot be reconciled." Any classification by authority must decide between them, and thus remove, *pro tanto*, one of the worst evils of the law—uncertainty. But the great gain that would accrue to the law would be the reduction of its bulk. We possess in our legal records accumulated instances of exact justice, in individual cases, series after series of social duties and relative rights, set forth in every variety and combination, and pursued into the minutest details, and to all of which, each in their turn, the law has been applied and adjusted with a precision and laborious rectitude such as the legal annals of no other country can, I believe, produce. The national attribute of exact labour on minute objects has stood us in good stead in the beating out of our laws. And they bear the impress throughout of the national characteristics in the spirit of liberty, the spirit of equality, and the hatred of injustice and oppression. But they exist in a scattered, inconvenient, and unmanageable form. Instances in place of precepts, examples in the place of rules, our recorded decisions stand thick together like a fair field of grain—full of wealth and worth, but waiting the hand that shall gather it into sheaves and store it to the use of man. And here I would observe that the method I propose is properly a digest, and not a code; and a digest has this advantage—that it permits of gradual formation. Unlike a code, which is the offspring of large and comprehensive views—and should deal with all subjects as a whole—a digest, with narrower aim, may properly be worked out piecemeal. In past times the *Digest of Comyn* and the *Abridgment of Bacon* did much in this direction, though they owned no authority but that of their intrinsic merit. And in modern times the law would be almost unapproachable but for the text-books, some of them executed with admirable talent, with which the labours of the bar have enriched us. If there be those who fear to handle a body of laws which, on the whole, work so well, I would observe to them, that I propose to displace nothing. I would not that the authority of the cases should necessarily be extinguished by the authority of the digest. Unless expressly set aside, and inconsistent with other decisions better approved, I would have all decisions remain of authority, content to await the time when the life shall have passed into their offspring, and they fall away of themselves, and pass into a sure decay. If there be those who think that a system which has survived with success for five or six centuries can have no great inherent vice, I would recall the attention of such to the position in which we now find ourselves. Each year now calls into being a number of decided cases so large as to threaten the extinction of the law as a conscientious study. I do not stop to inquire into causes, but the fact is, that the present century has added more decided cases to the law than are to be found in the records of the five pre-

ceding centuries put together. This vast agglomeration breeds not only confusion in those who are to be bound by the law, but inconsistency in those who administer it. No power of assimilation can keep pace with that of such production, and the tribunals, occupied to the full with the business before them, have little time to master the results of cotemporary decisions. This evil is aggravated by a competitive system of reporting, and the record of useless decisions; but the source of it lies deeper, and the time is now come when we may well ask whether the record of our law is always to lie in detailed instances, whether its principles are capable of no exposition, and whether the most laborious and wealthy community in the world will be content to pass on to posterity a shapeless mass of scattered laws as the legacy of its labours and its wealth. But the cause is that of the present generation as well as of posterity. Is the nation well content with things as they are? Are the conclusions of the law any longer accepted without test, and received without inquiry? Time was when the law had its priesthood, its mysteries, and its votaries. The science of the few was ever the mystery of the many; and while want of knowledge in the latter forbade the support of reason, possession of it in the former commanded the homage of reverence. Our people have ever loved justice and order, and revered the law as the guardian of both. Perhaps this reverence has been in past times carried too far. It concealed its errors and even gilded its faults. Did an estate pass to an unexpected hand by a flaw, the victim received his condolence, but the superior wisdom of the law had its worship. If strength has the element of the sublime, the inscrutable has not less so, and it was just because the ways of the law sometimes passed reason that they achieved admiration. A severe exactitude in the application of a system highly technical has ever been the foremost blemish of English jurisprudence. It was not difficult to exalt this severity of precision into the inflexibility of justice, and mistake an iron rule for a golden precept. And such was the tendency of the national mind, hugging itself in the conceit that its laws were not as the laws of other countries, and well content to worship what seemed at least mysteriously wise. But our lot is cast in times of a far other character. Reason and veneration—the two great forces by which instituted rights are upheld—bid fair to change places, and while one has waxed, the other has waned. There is no subject so sacred, not even the sacred subject of all, which escapes inquiry, observation, and the hard scrutiny of distrust. The law is no exception, and the popular sense of justice may not be violated with impunity, though its violation be backed by the sanction of forms or rules, however time-honoured or venerable. The time has surely come when those who really revere our noble laws should have it at heart to place them beyond cavil, and give them that hold on the good sense of the people which they have ever had on their affections, and it should not be difficult. For all reform is now possible, and the mere respect for what exists presents no longer any barrier to improvement. The slow formation of a general opinion, and the vis inertia which holds the present in its place—characteristics both of the national temperament—are the chief impediments to salutary change. Authority denies nothing now to the general desire, and the waters of discontent are no longer pent up till they overflow. But for this very reason the current of amendment flows torpid and slow. The active pressure of resistance, forcing men into concord towards their common aim, is withdrawn, and freedom to think and act with independence brings with it freedom to differ. It is, therefore, in times such as these that the

attainment of a general consent is most difficult. The most proper method to come at this purpose is general discussion. For interchange of ideas and comparison of mind begets both ultimate agreement and moral force to carry it into action. We are here met with this intention; and as the great honour has fallen to my lot of presiding over your deliberations, I have thus made venture on your patience, affecting not to inform, but rather to remind, and for the greater part to confirm rather than convince. But it is from those like yourselves, who have the knowledge to conceive and the public spirit to elaborate, that the impulse of reform must come. The spring and root of all our law reforms have been laid in public opinion. They have been moulded into shape, and carried into result, by the unpaid services of lawyers. It is good to reflect on this, for the power and the machinery are still ours; and it is no bad omen for future amendment that men have been found skilled in the mysteries of the law, and nurtured in its most cherished anomalies, ready to turn that skill to their amendment or removal. I venture not on any enumeration of the numerous shortcomings and defects of our legal system, beyond that to which I have shortly drawn attention. They will be amply discussed, I trust, by others. But I may add a word on the spirit in which legal changes should be approached. The great evil which has ever beset our judicature is that which legal education engenders—the prizing above their worth of refinement and precision. This it was that in legal procedure sacrificed the substantial rights of thousands at the altar of mere words. It culminated in the new rules of pleading of 1834, and begot its own downfall in the triumph of its complete adoption. But it still lives in all branches of our law. The fear of going too far ever present; the fear of not reaching justice faintly felt; positive injustice worked in the present to avoid possible injustice in the future; rights so bound in safeguards, lest they become wrongs, that they cease to be worth asserting; a structure in which form ever overlays substance, and a contest in which justice is apt to sink under the weight of her own armour; while precedent, casting its shadow both ways, binds the present by the errors of the past, and narrows it by the possibilities of the future—such are the fruits which a spirit of over-jealous caution and exactitude is calculated to bear. Nor is it the spirit of the lawyer alone. It is not long since a great peer was accused of shooting at a fellow-subject in a duel, and acquitted because it was not made to appear beyond doubt that his Christian name was Harvey Garnett Phipps, as charged, and not Harvey only, to which the proof extended. Nor have many years passed since a great demagogue conspired, if he did not levy war, against the Queen, and went unpunished after conviction, because the highest tribunal in the land decided in accordance with the law, that the proceedings were faulty in form. And yet our own generation looked on without outcry, and accepted these results without indignation. To all those who would earnestly lay their hand to the task of law reform, I would counsel the necessary boldness to grapple with this evil. I speak not of that boldness which is assumed to challenge the admiration of the multitude, and play the part of superior wisdom in the eyes of the ignorant by sweeping denunciations of that to which others bow; nor of that audacity which is the spurious offspring of veneration, chafing under the reverence of others, and casting off its own in a spirit of defiance; nor of that begotten of idleness and shallowness, which feels the wrongs of a system whose true defects it takes not the pains to discover, and flies out into a general condemnation. But I mean that boldness which is born of the firm conviction, that whatever is contrary to

common sense and natural justice ought also to be contrary to law; the boldness which fears not to depart from the past to render homage to the present; which acknowledges that the law is made for man, and not man for the law; and which marches straight to its object, preferring simplicity with some defects to the perfection at which complexity aims, but rarely reaches.

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THE JURIST.

LONDON, OCTOBER 8, 1864.

THE judgment of the Court of Queen's Bench in the case of *Coe v. Wise* (the defendant being the clerk to the Middle Level Commissioners) still leaves the law as to the liability of public commissioners for the negligence of their agents in a state of uncertainty. In the first place, there was a difference of opinion among the judges; and in the next place, the judgments of the majority appear rather to rest upon the particular language of the statute under which the commissioners acted than upon a general principle of law. It is to be hoped that the Court of Error, before whom the case is about to be brought, will clearly define the law applicable to such cases. The 138th section of the 7 & 8 Vict. c. 106 (the statute in question), is thus worded:—

"The said drainage commissioners shall make and maintain a good and substantial sluice of brick and stone at or near the entrance of the said cut into the river Ouse, with two or three openings, the waterways of which shall not be less than fifty feet, and with doors to each of the said openings of sufficient height to exclude the tidal waters."

There are also sections in the act enabling the commissioners to sue and be sued, in the name of their clerk, in respect of anything relating to the execution of the act; execution on any judgment obtained against them is to be levied on the goods and chattels belonging to the commissioners by virtue of their office. They may levy rates on the lands within the district, and are to apply the moneys so raised in executing the several works required by the act to be executed, and for the general purposes of carrying the act into execution.

The jury, in answer to questions put to them by Erle, C. J., who tried the cause, found "that the plaintiff had sustained damage by the absence of all due care and skill on the part of the commissioners, in respect of maintaining a certain sluice erected by them; in the next place, by the absence of such due care and skill in not providing remedies against mischief after the sluice was destroyed; and, in the third place, by reason that a certain puddle wall was not made." But they did not find that the commissioners had negligently or improperly employed unskilful or incompetent contractors or agents in the making and maintaining the works, or had any notice that the banks referred to in the 137th section of the act had been constructed without a puddle-clay wall in or near the centre thereof, as required by the section.

Upon this finding, Cockburn, C. J., and Mellor, J., were of opinion, that the defendant was entitled to the verdict, Blackburn, J., being of the contrary opinion. In the arguments and judgments the numerous authorities bearing upon the subject are collected. It would occupy a volume to discuss them all; and after discussing them, the mind would probably be in a state of bewilderment, and unable to extract a principle from them; but there are some leading cases, as it

were, on the subject, which it may be useful to mention, and which appear to be the cases on which the Court of Queen's Bench chiefly rested.

The earliest case is *Sutton v. Clarke* (6 Taunt. 29), where an action was brought against one of the trustees of a turnpike road for damage caused to the plaintiff's land by the insufficiency of a trench made under the advice and superintendence of the surveyor of the trustees. The Court held that the trustees were not liable. "The case," says Gibbs, C. J., "is perfectly unlike that of an individual who, for his own benefit, makes an improvement on his own lands, according to his best skill and diligence, and not foreseeing it will produce any injury to his neighbour. If he thereby unwittingly injures his neighbour, he is answerable. The resemblance fails in the most important point of comparison—that his act is not done for a public purpose, but for private emolument. Here the defendant is not a volunteer; he executes a duty imposed upon him by the Legislature, which he is bound to execute. He exercises his best skill, diligence, and caution in the execution of it, and we are of opinion that he is not liable for an injury which he did not only not foresee, but could not foresee. He has done all that was incumbent on him, having used his best skill and diligence."

Now, if this were the only case on the point, the principle would be clear, namely, that a person exercising a public office, from which he derives no profit, who acts to the best of his skill and judgment in what he orders to be done, and in the appointment of competent persons to carry out his orders, is not responsible for negligence on the part of those persons; and this decision would seem to govern the case of *Coe v. Wise*, as the jury did not find, and it must be considered not to have been the fact, that the commissioners had been guilty of negligence in the appointment of persons to make and maintain the works. An argument was built on the word "maintain" in the statute, but if it was necessary to appoint officers to take care that the works were well maintained, as well as to take care that they were originally well constructed, we do not think there is much force in the argument.

It is admitted, in the judgment in *Sutton v. Clarke*, that if the commissioners act wantonly and oppressively, they are responsible to an individual for the injury they do him. We apprehend that in such a case they would be personally responsible, and must satisfy the damages to the plaintiff out of their own funds, whatever right they may have to recoup themselves out of the funds of the undertaking of which they are commissioners; and also if, though unintentionally, they order works to be constructed which are beyond their jurisdiction, that they would be personally responsible, unless there is some special clause in the act under which they are appointed which protects them. The principle laid down in *Sutton v. Clarke* is clear; but, although the case is not overruled, it is difficult to reconcile it with the decision in the later case of *Whitehouse v. Fellows* (30 L. J., C. P., 305), unless it is to be considered that in the latter case there was personal negligence on the part of the trustees.

The main ground of the judgment in *Sutton v. Clarke* is, that the defendant derived no benefit from the works of which he was a commissioner. In a later class of cases, the fact that the body of which the defendants were commissioners or trustees did derive a profit from the works, has been held to be the ground for fixing them with liability. The case of *Gibbs v. The Trustees of the Liverpool Docks* (4 Jur., N.S., part 1, p. 68; 27 L. J., Ex., 321) may be considered the leading case on the point, as it is a judgment of the Court of Exchequer Chamber. In that case, the trustees of the docks received tolls as trustees; they had only a fiduciary interest in them, but the Court considered that it made no difference whether the tolls were received for a beneficial or fiduciary purpose. It is, however, to be inferred from that case, that there were funds applicable to providing against the events which caused the damage. In fact, as stated by Erle, C. J., in the later case of *Holliday v. The Vestry of St. Leonards, Shoreditch* (8 Jur., N.S., part 1, p. 79; 30 L. J., C. P., 361)—“The trustees received money in the shape of tolls on the vessels coming into the docks, and were bound, therefore, not to allow the vessels to enter when the docks were, to their knowledge, in a dangerous state; they were, consequently, in the situation of persons who, receiving money for an accommodation, are liable for the negligence of their servants in not making such accommodation safe.”

Now, the principles to be deduced from the cases we have cited are tolerably clear. First, that persons acting without profit in a public capacity are not liable for damage caused by the negligence of the agents whom they employ, provided they have taken proper care to select competent agents; unless they are trustees or commissioners acting on behalf of a public body which does receive profit out of the undertaking or works in respect of which the negligence causing damage is committed, then the trustees or commissioners are liable; it being assumed, that the profits so received were applicable to the preventing the negligence. Secondly, that trustees or commissioners, whether or not they have funds so applicable, are liable for damage caused by their personal negligence, or by their acting in a wanton and oppressive manner, and in excess of their powers.

The judgment of the Chief Justice in *Coe v. Wise* appears to be founded on these principles. He says, “The main criterion in these cases is, whether there is any fund at the disposal of public trustees or commissioners available for the payment of the damages in respect of injury occasioned by negligence. The fact that the Legislature has appropriated the funds in their hands to specific objects, so as to exclude their application to the payment of damages, leads fairly to the inference, that the trustees or commissioners cannot be held liable in their aggregate against corporate character.” And he draws a distinction in another part of his judgment between commissioners for public purposes strictly and the trustees of a public but still a quasi trading body.

Where, therefore, the trustees or commissioners have not been personally negligent, the result seems to be,

that they are not liable, unless the body which they represent has funds applicable to paying the damages; and in such cases the damages could not be levied upon the private property of the trustees, but only upon the property of the public body.

Then the case remaining for consideration is that in which the trustees themselves are fixed with personal negligence. Here we apprehend that they are personally liable, and should be sued as individuals, not in their public capacity. If they are to be sued in their public capacity, how are the damages to be levied in cases where the funds of the body which they represent cannot be applied to satisfy the damages, as in *Coe v. Wise*? Supposing there the jury had found that the commissioners were negligent in their appointment of agents, and, therefore, the verdict had gone against them? If the funds could not be applied towards payment of the damages, the judgment would be fruitless. If, on the other hand, such persons are liable, as any other individuals are, for personal negligence, they would be personally liable on the judgment, whatever indemnities they might be entitled to as between themselves and the public body. Such a rule of law may be alarming to persons so situated, but it seems to be correct.

We may trust that the Court of Error would, in their judgment upon *Coe v. Wise*, clearly expound the principles which govern liability in such cases. If it does, then their judgment will be of the greatest use in enabling those who have to advise upon such cases to find a safe pathway through the mass of somewhat conflicting and doubtful authorities on the subject.

Reviews.

A Manual for English Bar Students. By THOMAS SPENCE, of Trinity College, Dublin, Barrister-at-Law. [Dun & Duncan, 9, Fleet-street.]

Articled Clerks' Manual. By J. J. S. WHARTON, Esq., M.A., Barrister-at-Law. [Stevens, Sons, & Haynes.]

IN some remarks which we recently made on Mr. Josiah W. Smith's Manual of Common Law, we expressed our opinion that manuals are dangerous books for students at their entrance upon their legal studies, inasmuch as the natural tendency of the mind to save itself from labour, would incline a student to content himself with accepting the condensed propositions and rules of law laid down in the manual, instead of tracing them up to the fountain head, and acquainting himself with the authorities on which they are founded. This remark will apply to that portion of Mr. Spence's book which gives an outline of our constitutional history, of common law, equity, and international law; and we may add, further, that the very condensed account which Mr. Spence gives of the rise and progress of each of these heads of law, cannot possibly afford sufficient information upon them, even to the general reader. We think the questions on each of these subjects form the most valuable part of the book. Any one who applies himself sincerely to answering these, must acquire a great amount of information, and must search those books which supply it. Gentlemen who find a difficulty in employing their pupils, and in inducing them to search out the law on any point for themselves, would find Mr. Spence's a useful book.

In his Preface, Mr. Spence broaches a startling proposition, "that an important stimulus would be given to the studies of bar students and to the bar if inferior judgeships were thrown open to competition by examination." If there is to be such an examination, we do not at present see why it is to be limited to candidates for *inferior* judgeships. In *principle* politics have nothing to do with the appointments of superior judges, and the fitness of such an appointment is the more necessary, as the duties are the more important. We do not know of any country in which there is such an examination; and it is to be remembered, that although legal knowledge is essential in a judge, there are other essentials which an examination would not test, and the want of which could not be compensated by any amount of legal knowledge.

Mr. Wharton's book has reached its ninth edition; a fact which, in itself, proves it has been acceptable to the Profession, and to students. The remarks we have already made as to manuals will apply to so much of Mr. Wharton's work as bears this character, except that, so far as articulated clerks are concerned, it is not to be expected that they can read profoundly on the subjects of which a manual is a condensation; and, therefore, as a book of reference for them, it is not open to the objections which we have suggested. It contains sets of questions on all the subjects on which articulated clerks are examined, and the student, whether a future barrister or an articulated clerk, can very well ascertain his proficiency in his studies by the way in which he can answer these questions.

NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE.

On the fifth day of the Congress at York (Sept. 27), after the general meeting had terminated, the several sections reassembled, and various papers were read. We extract such as come under the class "Jurisprudence:"—

Mr. Robert Stuart's paper, read in this department, on the institution and conduct of public prosecutions, advocated the abandonment of the existing system of prosecution and the appointment of a public prosecutor, as being more in accordance with that which had been long accepted as the true definition of crime, that it was an offence rather against the State than against the individual. The system of the private institution of criminal proceedings had, he believed, nothing to recommend it; and it was costly, uncertain, and, as compared with the system in other countries, unsuccessful. The Scotch system, based on the method of public prosecution, was happily conceived, and most admirably practised. A greater contrast could not be presented to the eye and to the mind than that between an ordinary criminal trial in Scotland and a trial in England. Compared with the method and forms of procedure in the High Court of Justiciary in Scotland, the Old Bailey in London, he had almost said, was neither more nor less than a bear-garden; nor, excepting in the fact of there being a public prosecutor in Scotland, could he account for the difference between the two courts. While he advocated the appointment of a public prosecutor, he would reserve the right of private parties to institute prosecutions at their own expense. He was in favour of retaining the grand jury, and recommended that it should be made a little more efficient by regulations which would go to secure a careful examination of the prosecutor's evidence.

Lord Brougham said he remembered the case of a grand jury in Lancashire, who were violent ultra-Protestants, and who put a man on his trial for

murder, who was a Roman Catholic, because his bailiff had allowed a rope to be left across a piece of ground over which a woman fell and lost her life. The judge who presided on that occasion said it was a most scandalous proceeding, and he wished to reprimand the jury, but they had been discharged.

Mr. Stuart maintained that the Scotch system of private recognitions was superior to the English mode, as it enabled the prosecutor to get up his case well, and secured to the accused a fair and impartial trial. The publicity given by newspapers in England to preliminary investigations was often opposed to the true interests of justice, and the press would exercise a sound discretion by withholding the depositions where there was a committal, or likely to be one. He was against the introduction of the verdict of "not proven" allowed in Scotland, thinking it unconstitutional, illegal, and unjust. He concluded by referring to the evils arising from the want of an efficient system of criminal appeal.

Dr. Waddilove read a paper on "The Exclusion of Evidence," in which he maintained the following propositions:—1. That persons charged with a criminal offence should on their trial be permitted to give their evidence on oath in order to clear themselves of the charges against them. 2. That husbands and wives should be competent and compelled to give evidence for and against each other. 3. That parties to a suit, of whatever nature, should be competent and compellable to give evidence against each other in criminal as well as in civil cases. 4. That judges should be empowered to summon any person to give evidence if they thought necessary, whether in civil or criminal cases, and that they might adjourn the case for that purpose.

A long discussion ensued, in the course of which Lord Brougham (who presided) said, that one great difficulty in the way of appointing public prosecutors was the great amount of patronage which it would place in the hands of the Government.

Alderman Leeman opposed the appointment of a public prosecutor; and

Mr. Harris, of Manchester, and other gentlemen, supported it.

REGISTRATION OF VOTERS, MIDDLESEX.

On Wednesday, the 5th, Edmond Beales, Esq., the barrister appointed to revise the list of voters for the county of Middlesex, held his court at the Town Hall, Bethnal-green, to revise the lists for that polling district.

Mr. Henry Smith, of Norfolk-street, appeared for the National Conservative Registration Association; Mr. T. Alley Jones, of Clement's-inn, for the Middlesex Conservative Registration Committee; and Mr. W. Albert James, of Parliament-street, for the Liberal Registration Society.

One case alone excited any interest.

Richard Henry Ashford claimed for a share in freehold houses, Cooper's-gardens, Manchester-buildings, Bethnal-green, and, with some others having a similar qualification, was objected to by the Conservatives.

In support of the claim,

Mr. James said, that on several occasions these voters had been objected to, their cases argued, and the votes allowed, particularly in 1845, when the case was heard before the late Mr. Shadwell, and he decided in their favour. On two occasions the names were expunged from the list, once in consequence of the absence of deeds, and on the other occasion the decision was against them on the ground that the legal estate was not in the claimants. In 1861 they were objected to

by Mr. J. A. Coates, Mr. Henry Smith, the present objector, representing him. The case was gone into and the votes allowed by the barrister. Since then they had remained on the register. Mr. James then complained that Mr. Smith should have now objected, being, as he was, in possession of the full facts of the case; but he had been given to understand that the objection was taken on the decision in *Bennett v. Blaine*, but he contended that that decision had no bearing on the present case; it referred to the shareholders in the Liverpool Corn Exchange, who received the proceeds of the letting of certain stalls.

The Barrister.—That case simply confirms the ruling as to the law, and introduces no new principle.

Mr. James.—None whatever. It is simply a confirmation of our text-books on questions of registration, which point out that shareholders having only an interest in net profits are not entitled to be registered. In this case several gentlemen, in 1860, united to form an association or company, termed "The House Property Association;" a deed of settlement was drawn up, in which the objects of the company were fully set forth, and directions given as to the management of its affairs. This deed of settlement he would put in as evidence, and it would be found that none of the trusts therein were incompatible with the holding of a freehold estate by the shareholders. Among other trusts the trustees were to acquire freehold, copyhold, and leasehold property, and other hereditaments purchased with the accumulated funds of the several members of the association, who paid 2s. 6d. a week to the general fund. All estates so purchased were conveyed to trustees for and on behalf of themselves and the several members equally. The trustees had the management, repair, and letting of the property, and their members met monthly, and exercised a general control over the estate, and half-yearly an account was taken of the net rents and proceeds, and they were divided amongst the several shareholders, or further investments were made in estates. The only trust in the deed that could in any way affect the rights of the shareholders as owners in fee was a provision that their shares for the purposes of the association should go to their executors, and be dealt with as personal estate. He did not contend that the trustees had any legal estate; but that they had an equitable estate there could not be a shadow of a doubt.

The claimant and one of the trustees produced the deeds.

The deeds were handed in and examined by the revising barrister, who asked what distinction there was between property conveyed to trustees for the benefit of one individual, and that conveyed to trustees for their own benefit and that of several other individuals?

Mr. James.—None whatever as affecting their right to vote. In support of the claimant he referred to the case of *Baxter v. Newman*, and contended that it was one that supported the right of the claimant, and he relied on the statement of Lord Chief Justice Tindal, that no declaration that property should be regarded as personality could alter the nature of the estate, and that in equity the Court would deal with such declaration only so far as the object and intent of the deed extended. He believed Mr. Smith relied on the case of *Bennett v. Blaine*. That case, he contended, was quite distinct from the present, and the judges clearly marked the line which divided that case and those affected by *Baxter v. Newman*. Mr. James then put in the deeds of conveyance to trustees of the estate, whereby the estates were conveyed to the trustees named in the deed of settlement to the uses and purposes declared therein. He then called the voter, Mr. Ashford, who proved the value of the property was more than sufficient to give each shareholder a vote.

Mr. Smith called attention to the occasion on which, in October, 1856, Mr. Shadwell expunged the name of this and other similar claimants on the list, on the ground that they had not the estate in fee, it being in the trustees, the interest of the claimants only being in personality. He relied on the case of *Bennett v. Blaine*, as deciding that these persons had no right to vote; that right, if it existed at all, only extended to the trustees, and not to the members of the company. The facts were very clear, and it was simply necessary for him to lay the deed and the case he had referred to before the barrister, and he relied confidently on his upholding the decision of Mr. Shadwell, that these claimants had simply a personality in this estate.

Mr. James replied, citing the instance in which Mr. Shadwell, in 1845, admitted this and similar claimants.

The Barrister (comparing the decisions).—Why, one decision is in the teeth of the other.

Mr. James said, if the barrister would refer to the latter decision, he would see it went only to the extent that the claimant had no legal estate. No doubt, a decision took place on this point, and Mr. Shadwell adhered, as was his wont, to the first view he took of the law, and decided the question somewhat hastily.

The Barrister having recapitulated the arguments that had been used, and quoted the provisions of the deed, said, upon them it appeared conclusive that the parties subscribed money to buy property in which they all had an equal interest and right. It was true it was conveyed to trustees, but for the use and interest of the shareholders; the conveyance was made to trustees only for the sake of convenience in managing and dealing with the property, and the members had equal benefits with the trustees, who were also members. The same observation applied to the provision that, at the death of any one of the holders, his share should go to his executor; that was simply an arrangement for convenience, as the heir-at-law might be an infant. Nothing, he thought, could be stronger on the point in question than the case of *Baxter v. Newman*, but he did not think *Bennett v. Blaine* was applicable to this case.

The name was retained, as well as those of the other partners in this property.

Mr. Ashford applied for costs.

The Barrister refused to grant them, shewing that, whilst he did not think the recent case applicable to this one, he thought the objection, after that decision, not an unreasonable one to make.

It appears that Mr. Thomas Hankey, M.P., and Sir M. Peto, M.P., whose names were struck out on the preceding day, on the list at Westminster, are on the register for other parishes in the county of Middlesex.

COURT OF QUEEN'S BENCH.—The Court of Queen's Bench will hold its first sitting at Nisi Prius, in Michaelmas Term, in Middlesex, on Thursday, Nov. 3; second sitting-day, Wednesday, Nov. 9; third sitting-day (for undefended causes only), on Wednesday, Nov. 16. There will not be any sitting during Term in London. The Court will sit after Term, in Middlesex, on Saturday, Nov. 26, and after Term, in London, on Saturday, Dec. 10. If the causes in the list for the above sitting-days in Term are not disposed of on those days, they will be tried by adjournment on the days following.

The Right Hon. Sir William Erle, Knt., Lord Chief Justice of her Majesty's Court of Common Pleas at Westminster, has appointed H. Hawkes, Gent., of Birmingham, Warwickshire, to be one of the Perpetual Commissioners for taking the acknowledgments of deeds to be executed by married women in and for the county of Warwick.

COURT OF BANKRUPTCY.—Oct. 5.

DEATH OF MR. COMMISSIONER FANE.—Mr. Registrar Winslow came into court, and addressing the members of the Bar, spoke as follows:—"Gentlemen of the Bar, I suppose you have all heard, as I have, of the death of Mr. Commissioner Fane, whose seat I now occupy. I only heard it since I came to the court. All of us must feel deeply grieved at the death of one who so recently presided here in the administration of justice. If there were no other reason for adjourning the business of the court, I think that a proper feeling of respect to his memory makes it desirable that the public business should not be proceeded with to-day. I shall, therefore, adjourn all public meetings—last examinations and all orders of discharge—to the same hours to-morrow (Thursday); but that the suitors may suffer as little inconvenience as possible, I shall hear and dispose of all the business which a registrar can dispose of in the absence of the Commissioner, in a private room to-day."

Mr. Bagley, on behalf of the Bar, said the course pursued by the learned registrar had the entire approval of the Bar.

Robert George Cecil Fane, the late Commissioner, was born in 1796, and called to the bar in 1819. In 1823 he was appointed one of the old Commissioners in Bankruptcy. In 1832, upon the constitution of the Court of Bankruptcy, he received the appointment which he held till his death. Practically, Mr. Fane has, since the death of Mr. Commissioner Evans, been the senior London Commissioner, for Mr. Commissioner Fonblanque, whose appointment is anterior, has during the last two years almost ceased to discharge any judicial functions. Mr. Fane, some years ago, took an active part in bankruptcy reform, having written numerous pamphlets, and been a frequent correspondent with some of the public daily journals on that subject. He also took an active part in the formation and working of railways, and had been a director and chairman of some companies. The deceased gentleman, who was one of the Westmoreland family, is said to have been of a most humane and generous disposition—somewhat hasty and impetuous, perhaps, but frank and prompt to do a benevolent action. He was married twice, and leaves a widow and children. A few days ago he went to Weymouth, and it was believed and hoped he would soon be restored to health, but a severe attack of inflammation of the brain terminated his life in a few hours. His favourite amusement was in the hunting field. He was the very Nimrod of the bench, and has more than once come into court with his arm in a sling, the result of accident in the chase: for though very near sighted, he was a daring rider. His eccentricities on the bench occasionally have brought upon him the censure of the public press. By the 2nd section of the 24 & 25 Vict. c. 134, no vacancy in the office of Commissioner in the Court of Bankruptcy in London shall be filled up until the number of Commissioners be reduced to less than three. At present there are nominally the full number, viz. Commissioners Holroyd, Goulburn, and Fonblanque; but the latter is unable, from advanced age and infirmity, to attend, so that in fact there are but two, and they are absent on vacations, after very long and very hard work.

SUDDEN DEATH OF A BARRISTER.—We regret to record the sudden death of Mr. Charles Winston, special pleader (Home Circuit), which took place on Monday afternoon at his chambers, No. 3, Harcourt-buildings, Temple. The deceased had been staying in

the country a short time with his family, and only arrived in London in the morning, for the purpose of arranging some of his accounts, his intention being to return by the four o'clock train. His clerk was sent into the city to get a cheque cashed, and on his return found his master lying on the floor apparently dead. He at once called in the assistance of Mr. Broome, gardener of the Temple, and of Dr. Brooks, of Fleet-street, who was of opinion that life had been extinct nearly three-quarters of an hour. The deceased appeared to be in excellent health, and the cause of death is supposed to be disease of the heart. Mr. Serjeant Payne, the coroner, held an inquest on the body of the deceased yesterday afternoon, when Dr. Brooks gave it as his opinion, that death resulted from disease of the heart, produced by overwork, and prolonged abstinence from food. A verdict to that effect was accordingly returned.

Mr. Charles Jerome Murch, of the Western Circuit, has been appointed recorder of Barnstaple and Bideford, in the place of Mr. James Arthur Yonge, deceased.

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THE JURIST.

LONDON, OCTOBER 15, 1864.

ALTHOUGH in the last session of Parliament no statute was passed which contained any provisions of striking importance, still there were some containing novel and useful enactments, to which we think it may be useful to call the attention of our readers. The first of these is "An Act to enable Joint-stock Companies carrying on Business in Foreign Countries to have Official Seals to be used in such Countries." It applies to companies, under the Companies Act, 1862, which carry on business in any foreign place, and empowers them to have an official seal (the fac-simile of their common seal) to be used in that place, and with the name of the places inscribed on it. This seal may be affixed to any contract or instrument to which the company is a party in such places, by an agent specially appointed, or a local agent or commissioner appointed by the company under their articles of association; the power to affix the seal in such cases to be conferred by an instrument in writing, under the common seal of the company. This power is, by sect. 4, to last during the period mentioned in the instrument conferring the power, or, if no such period is therein mentioned, until notice of its determination shall have been given to the persons *dealing with such agent, and all persons claiming under them*. This section may give rise to difficulty and dispute. It compels the person "dealing with the company" (which words, we suppose, mean, "contracting with the company"), who probably would be a foreigner, to see whether the power of the agent to affix the seal has not expired; and if no period for its duration is specified, it compels the company to give a notice to that effect, not only to the actual parties to the contract, but to *all persons claiming under them*; which is a very ambiguous expression. Moreover, when the seal has once been affixed to the instrument there would seem to be an end of the matter; the words "dealing with the agent," &c., are obscure. The 6th section limits the powers given by the statute to companies expressly authorised to exercise the same by their articles of association, or a special resolution passed under the Companies Act, 1862; and the powers are to be exercised subject to the restrictions in the articles or resolution. It would seem, therefore, that the person contracting with the company (probably, a foreigner) must take good care to examine the articles of association, or the resolution, lest he should be met by the "ultra vires" defence when he attempts to enforce his contract. The 7th and last section reminds us, that in the Companies Act, 1862, there is a section—the 55th—which contains a general provision, containing all the powers given by the act of last session, except that it does not empower the company to have a fac-simile seal. The 7th section expressly provides, that this 55th section of the earlier act is still to be in force. Two other statutes were passed relating solely to railway companies; one, cap. 120, "An Act to facilitate in certain Cases the obtaining of further Powers by

Railway Companies;" the other (cap. 121), "An Act to facilitate in certain Cases the obtaining of Powers for the Construction of Railways." The provisions of these acts are too numerous to allow of an examination of them in detail. The object of cap. 120 appears to be to save the expense of a special act in cases where two or more companies are desirous of entering into an agreement with respect to the working and managing their respective lines; where a company is desirous of extending the time for sale of superfluous lands, and where it is desirous of raising additional capital; and for these purposes they are to obtain a certificate from the Board of Trade. The object of cap. 121 is to obtain a similar certificate, empowering companies to make railways without a special act, where the landowners and other persons beneficially interested are consenting parties. If these two statutes are well worked, the result must be, a considerable diminution of the business with which parliamentary committees have hitherto been occupied, and a considerable addition to the labours of the Board of Trade. Unless, indeed, the possibility of finding space, and a profitable return for the construction of many more railways is by this time nearly at an end—a conclusion to which a glance at a map of Great Britain, with the railways now made or in course of construction, tends to lead the mind.

Only one short statute has been passed affecting the Divorce Court (27 & 28 Vict. c. 44). It remedies a defect contained in the 20 & 21 Vict. c. 85, s. 21, which only enabled a husband or creditor who wished to obtain the discharge of an order protecting a wife's property, to apply to the very court or magistrate by whom the order was made. It had been decided, that if the particular magistrate who made the order died, or became incapable of acting, the husband or creditor was deprived of the power of applying to discharge it; the act of last session remedies this defect.

The act for the better regulation of street music within the metropolitan police district (c. 55), may be considered a triumph by those individuals through whose exertions it has been passed; but except in cases of sickness, the relief which the act is intended to give will depend very much on the humour of the magistrate who has to decide whether the ordinary occupation or pursuit was such as would, in its nature, be disturbed by street music, or whether there was other reasonable or sufficient cause for the complaint. A man of fortune, and without occupation, for instance, may be in perfect health, but have an aversion to a German band—is this a sufficient cause? Or a party may be playing at cards, and their attention to the game distracted by the melody from without—is this a reasonable cause? Many questions of this nature must arise; but still, most inhabitants of London, and especially those who live in narrow streets, will admit that some more stringent provisions for controlling street music were required.

In an act for granting stamp duties (c. 56), the 19 Geo. 4, c. 87, s. 4, prohibiting reinsurances, except where the insurer becomes bankrupt or insolvent, or dies, is repealed, and such insurances are now made lawful.

The 27 & 28 Vict. c. 95, "An Act to amend the Act 9 & 10 Vict. c. 93, for compensating the Families of Persons killed by Accident," is a very expedient measure; it often happened, where persons in a humble situation in life were killed by the negligence of others, that either there was no personal representative, or if there was, he was unwilling to bring the action, and so the parties entitled to compensation under the earlier act were without redress. The 1st section of the act of last session enables all or any of the persons for whose benefit the action may be brought to bring it themselves, where there is no personal representative, or where, if there is one, he does not bring the action within six months from the death. The 2nd section relieves defendants in such actions from the difficulty in which they had previously been placed, as to distributing the sums which they wished to pay into court, by paying one entire sum, covering all the claims, without specifying the shares into which it is to be divided.

The last statute to which we would call attention is not the least important of the Legislative measures of the session. It is "An Act to amend the Law relating to future Judgments and Recognisances" (cap. 112), and provides, that "no judgment, statute, or recognisance, to be entered up after the passing of the act, shall affect any land (of whatever tenure) until such land shall have been actually delivered in execution by virtue of a writ of *elegit* or other lawful authority, in pursuance of such judgment, statute, or recognisance." By the 23 & 24 Vict. c. 38, s. 1, it was enacted, that lands should not be affected by a judgment, unless a writ of execution was issued and registered; and even then, as to a *bonâ fide* purchaser, the issuing and registering were of no avail, unless the writ was put in force within three months from the time when it was registered.

The last act compels the execution creditor actually to take the land in execution; for until he has done this he has no lien upon it. Then, under sect. 3, he must register his writ in the name of the *debtor*; and then, under sect. 4, having taken the land in execution and registered the writ, he may obtain, upon petition in a summary way, an order from the Court of Chancery for the sale of the debtor's interest in such land.

The effect, therefore, of the act is, that as to judgments entered up since the act passed, the facility of transferring land to *bonâ fide* purchasers is greatly increased. As to previous judgments, the law remains as it was before the act passed.

ON COMPOSITION DEEDS.

In a recent edition of Mr. Hayes's *Concise Conveyancer*, edited by W. B. Coltman, Esq., the title, "Com-

position Deeds," has been introduced for the first time. The interest created by the obscure legislation upon this subject induces us to adopt the learned editor's remarks, and reprint them with little variation:—

Before the passing of the Bankruptcy Act, 1861, 24 & 25 Vict. c. 134, the only power that a majority of creditors had of binding a dissentient minority without referring to the Court, was by an arrangement by deed, under the 12 & 13 Vict. c. 106, ss. 224 to 229, which required a majority of six-sevenths in number and value of the creditors whose debts amounted to 10*l.* and upwards. It was held by the Courts, in construing these clauses, that a deed which did not provide for the distribution of the entire estate of the trader^o among the whole of his creditors in bankruptcy did not satisfy the terms of the act, and that the majority of six-sevenths had only power to bind the rest by an arrangement which provided for the distribution of the whole estate[†].

These clauses were repealed by the 24 & 25 Vict. c. 134; and by the 192nd section of the last-mentioned act it is enacted, that

"Every deed or instrument made or entered into between a debtor and his creditors, or any of them, or a trustee on their behalf, relating to the debts or liabilities of the debtor, and his release therefrom, or the distribution, inspection, management, and winding up of his estate, or any of such matters, shall be as valid and effectual and binding on all the creditors of such debtor as if they were parties to and had duly executed the same, provided the following conditions be observed (that is to say),

"1. A majority in number representing three-fourths in value of the creditors of such debtor whose debts shall respectively amount to 10*l.* and upwards shall, before or after the execution thereof by the debtor, in writing assent to or approve of such deed or instrument.

"2. If a trustee or trustees be appointed by such deed or instrument, such trustee or trustees shall execute the same.

"3. The execution of such deed or instrument by the debtor shall be attested by an attorney or solicitor.

"4. Within twenty-eight days from the day of the execution of such deed or instrument by the debtor, the same shall be produced, and left (having been first duly stamped) at the office of the chief registrar for the purpose of being registered.

"5. Together with such deed or instrument there shall be delivered to the chief registrar an affidavit by the debtor, or some person able to depose thereto, or a certificate by the trustee or trustees, that a majority in number, representing three-fourths in value, of the creditors of the debtor whose debts amount to 10*l.* or upwards, have in writing assented to, or approved of, such deed or instrument, and also stating the amount in value of the property and credits of the debtor comprised in such deed.

"6. Such deed or instrument shall, before registration, bear such ordinary and ad valorem stamp duties as are hereinafter provided.

"7. Immediately on the execution thereof by the debtor, possession of all the property comprised therein, of which the debtor can give or order possession shall be given to the trustees."

In order that a composition deed may be binding

* The *Concise Conveyancer*, or Short Precedents of Conveyances, with Practical Remarks and Summary of the Stamp Laws relating to Conveyances. By William Hayes, Esq., barrister-at-law, one of the six conveyancing counsel of the High Court of Chancery. The second edition, with considerable additions, including a chapter on Composition Deeds under the New Bankrupt Act. By W. B. Coltman, Esq., of the Inner Temple, barrister-at-law. Royal 12mo. Sweet. 1884.

* *Tetley v. Taylor* (1 El. & Bl. 521); *Drew v. Collins* (6 Exch. 870); *March v. Warwick* (1 H. & Norm. 158); and see *Noble v. Gadlean* (5 H. L. C. 504).

† *Bloomer v. Darke* (2 C. B., N. S., 165); *Larpent v. Bibby* (5 H. L. C. 481).

on the creditors who do not assent to it, it must be for the equal benefit of all the creditors, whether they assent to it or not, and whether they execute it or not. (See *Walter v. Adcock*, 7 H. & Norm. 541; *Ex parte Morgan*, 9 Jur., N. S., part 1, p. 559; *Ex parte Rawlings*, Id., p. 1183; *Ex parte Godden*, 32 L. J., Bank., 37; *Iderton v. Castrique*, 9 Jur., N. S., part 1, p. 993; and *Ex parte Cockburn*, 10 Jur., N. S., part 1, p. 573). And in framing a deed of this nature the draftsman will, of course, take care to let this intention appear clearly on the face of the instrument. It would seem, however, that some of the judges, either from distrust of the policy of the enactment, or from a laudable fear of opening a door to fraud, are disposed to enforce the rule with a strictness which threatens, if universally adopted, to be as effectual in nullifying the provisions of the composition clauses in the act of 1861 as the doctrine established by the case of *Taylor v. Teiley* was in the case of the similar clauses contained in the act of 1849.

These remarks apply not only to the case of judges from whose known views opinions of this kind might reasonably have been expected, but even to the case of the present Lord Chancellor, who, by the prominent way in which he put himself forward in Parliament as the advocate of the views of the mercantile community with regard to the administration of bankruptcy, had so large a share in procuring the alterations of the law which were inaugurated by the late act.

We may illustrate these observations by referring to the remarks of Lord Westbury in the case of *Ex parte Cockburn* (10 Jur., N. S., part 1, p. 573). In that case an instrument, the validity of which was in question, had been made between one Laxton of the first part, his executing creditors of the second part, and all his other creditors of the third part. Besides the creditors who executed the deed, there were included in a schedule attached thereto the names and debts of various non-executing and non-assenting creditors. There was also a considerable number of non-executing and non-assenting creditors whose names did not appear at all in the schedule. By the deed in question, the parties of the second part, in consideration of a composition on their respective debts paid to them by Laxton, released him from all the debts due to them, and from all actions, &c., and Laxton thereby covenanted with the several parties thereto of the second and third parts to pay all his creditors, including the parties thereto of the second part (unless the same should have been paid to them on the day of the date of the deed), a composition of 3d. in the pound on the amount of their respective debts then due and owing by Laxton, either alone, or jointly with any other person or persons. According to the report in *THE JURIST*, the Lord Chancellor, after stating the provisions of the deed, proceeded to observe, that "the creditors who had not executed the deed, and those who were not named in the schedule, were placed by the deed in a situation very inferior to that of the majority of the creditors. To the latter the composition was paid down, whereas the former had to rely upon the covenant. . . . But, further," continued his Lordship, "it is clear that the creditors who have not executed the deed should not sue upon the covenant of the debtor^o. The covenant is

with the parties to the deed of the second and third parts, and as the deed is between parties, no person who is not a party could sue upon the covenant. This clearly follows from the settled principles of law which are illustrated by the case cited in the argument." (*Gilby v. Copley*, 3 Lev. 138; *Melcalfe v. Pycroft*, 6 Mau. & S. 9; *Berkeley v. Hardy*, 5 B. & Cr. 355). "Again: the creditors whose names and debts are not set forth in the schedule, are under a great disadvantage in this respect, namely, that there is no admission by the debtor of the debts due to them respectively. Even, therefore, if any one of such creditors could now come in and execute the deed, and sue upon the covenant,

lor meant to say was, that the creditors whose names were not mentioned in the schedules, though expressed to be made parties to the deed under the general description of creditors, could not really be regarded as parties to the instruments, in consequence of their not being made parties nominatim. That this was really the point appears clearly from the argument of Mr. Druce, the counsel for the dissentient creditors; but, with submission, it may be doubted whether the proposition, even when understood in this limited sense, is borne out by the authorities.

It is a well-known maxim of law, that no person, independently of the stat. 8 & 9 Vict. c. 106, s. 5, can sue on a covenant inter partes who is not a party to the indenture, though it is otherwise in a deed-poll. The question that really arose in *Ex parte Cockburn* was what constitutes a person a party to an indenture. None of the authorities cited by Mr. Druce bore on this question, as it could not be contended in any of the cases cited that the person, whose right to sue was in question, was made a party either nominated or by any other description.

The objection that parol evidence cannot be admitted to explain a patent ambiguity or to shew who are the parties to a written contract is not more conclusive, as it is obvious that parol evidence must in every case be admissible to shew the identity with the covenantee; and it would seem that parol evidence that the plaintiff was a creditor of the covenantor would be equally admissible. There is in fact no more ambiguity than there would be in a gift to a testator's daughter's husband. The observations of Lord Campbell, in delivering the judgment of the Court of Error, in *The Sunderland Marine Insurance Company v. Kearney* (20 L. J., Q. B., 421) bear upon this point. "Reliance," said his Lordship, "was placed on the rule laid down in *Green v. Horne* (1 Sal. 197), that though covenant may be brought on a deed-poll, yet the party must be named in the deed. But it cannot be meant that his name of baptism and surname must necessarily be set out. If he be sufficiently designated in the deed, this must be enough to entitle him to sue for breach of covenant to pay money to the person so designated." It is true that this was the case of a covenant in a deed-poll; but as regards the admissibility of parol evidence, which is the point now in question, there can be no difference between a deed-poll and an indenture.

In Lush's Practice, after stating the rule, it is added, "the reason given is, that the delivery, which is essential to the perfection of a deed, is not made to him (i. e. to the covenantee, who is no party). If it were in fact so, the evidence would not be admissible, as contradicting the language of the deed." And it is added, "in a deed-poll, every person with whom an agreement is made becomes, in fact, a party to it." If this be so, we find a reason for a rule which, at first sight, seems somewhat arbitrary, viz. that the law implies that when a deed is made between parties, they are the sole contracting parties, and consequently no stranger to the deed can sue upon it, inasmuch as the contract was not entered into with him. It is true, that, even in this modified form, the rule, like most other fixed rules of construction, will at times be found to defeat the intention; but this is no reason for pushing its operation further than the principle of construction on which it is founded requires. It is confidently submitted then, that, to use Lord Campbell's expression, it cannot be necessary, in order to constitute a person a party to an indenture, that his name of baptism and surname must necessarily be set out. If he be sufficiently designated as a party, it is enough to entitle him to sue for a breach of covenant.

* It is not for a moment to be supposed (though the words may seem to bear that interpretation), that so able a judge as the Lord Chancellor meant to lay it down as law that a covenantee cannot bring an action on a covenant contained in an indenture which he has not executed. If so, every solicitor who fails to procure the execution of a purchaser or mortgagee is guilty of an act of the greatest negligence. It is evident, however, that what the Lord Chancellor

he would be under the necessity of proving the fact, and amount of his debt. But the deed to be binding must be complete at the time it is registered, and it cannot be subsequently executed by any creditor who had not previously assented to or approved of it in writing. Therefore, it is plain there are several creditors in each case who are in a situation of great disadvantage. The deeds have been framed in an imperfect manner. If the names and debts of all the creditors who are not parties to, or have not assented in writing to, the deed, had been included in a distinct schedule, written under the deed, and the amount of the composition on such last-mentioned debts had been deposited in a bank, or with a trustee for such last-mentioned creditors respectively, with directions to pay the amount on demand; and if the debtor had also covenanted with the persons named in such schedule, that he or the trustees respectively should and would pay such composition on demand, it might, perhaps, have been reasonably contended, that all the creditors were, as far as possible, placed in a situation of equality." His Lordship then proceeded to pronounce the deed invalid.

In consequence of the strict construction which, as we have just seen, has been put upon the enactments now under consideration, and of the impossibility, arising from the nature of the case, of ascertaining with absolute certainty the fact that the statement of the debtor contains a full disclosure of all his liabilities, the draftsman, when engaged in framing a composition deed, should take especial care not to insert any clause which, in case any debt shall turn out to have been concealed, may affect the validity of the instrument, by placing the creditor to whom such debt is owing in an inferior position to the rest of the creditors^o. From this cardinal point we may deduce from the observations of the Lord Chancellor, just cited, the following rules, which may be of assistance to persons who may be employed in the preparation of composition deeds:—

1. The composition should not be paid on the execution of the deed, but should be secured by the covenant of the debtor, or otherwise†.
2. The covenant or security should be made with a trustee for all the creditors.
3. No covenant should be entered into with any of the creditors.
4. A schedule of assenting creditors may be introduced; but such schedule should not contain any admission of their debts, or any information which can, by any ingenuity, be construed to give the named creditors any advantage over the other creditors.

To these remarks it may be added, that a covenant which is unreasonable with regard to non-assenting creditors invalidates the deed as against them. Thus, in *Wood v. Foote* (1 H. & C. 841), a covenant by each of the creditors to indemnify the debtor against any bills of exchange on which he may have incurred liabilities, or indorsed by any of his creditors, and in *King v. Dell* (2 H. & C. 184), a covenant by the creditors not to sue until the instalments were payable, and that if they did sue, their debts should be re-

leased, were held to be unreasonable covenants, and to avoid the deeds in which they were inserted.

It seems, however, that in some cases an unreasonable clause may be rejected, the deed itself being upheld. Thus, in *Ex parte Spyer* (9 Jur., N. S., part 1, p. 949) it was held, that a power enabling the trustees to make such arrangements with creditors whose debts were under 10*l.*, as they might deem expedient, might be rejected as repugnant to the general tenor of the deed, and that its existence formed no objection to the validity of the instrument.

It may well be doubted whether all the rules given above (which, after the observations of the Lord Chancellor, cited *supra*, it would hardly be prudent to neglect) are really necessary for the protection of dissentient creditors. It is manifest that they do not tend to facilitate the task of the draftsman on whom the duty of preparing a composition deed may devolve, or to enhance the value of his work when completed. It may, however, reasonably be hoped that the Legislature, seeing the difficulties which have arisen from the imperfections of the recent act of Parliament, will not allow a lengthened period to elapse without passing an act to remove, by a carefully considered and well drawn enactment, some of the difficulties which have arisen from the late alterations in the law of bankruptcy^o.

It seems now to be fully established, that a *cessio bonorum* is not essential to the validity of a deed operating under this section (see *Ex parte Castleton*, 31 L. J., Bank., 71; *Ex parte Rawlings*, 9 Jur., N. S., part 1, p. 1183; *Ex parte Morgan*, Id., p. 559; *Ex parte Cockburn*, 10 Jur., N. S., part 1, p. 573; *Clapham v. Atkinson*, Id., p. 357); though a contrary view was taken by Pollock, C. B., and Martin, B., in the Court of Exchequer, in the case of *Walter v. Adcock* (8 Jur., N. S., part 1, p. 518), Wilde, B., dissentiente. In this case, however, it was not necessary to decide the point†.

In reckoning the required majority of creditors, the secured creditors must be taken into account as well as the unsecured. (*Ex parte Godden*, 32 L. J., Bank., 85).

Creditors under a trust deed are put in the same position in which creditors under a fiat are placed by the bankrupt law. Secured creditors, therefore, rank under the deed of trust, after deducting the value of their securities. (*Ex parte Spyer*, 9 Jur., N. S., part 1, p. 949; see also *Ex parte Morgan*, Id., p. 559). It seems, that where there is no joint estate, the requisite majority of the joint and separate creditors will be sufficient to bind the dissentient minority; but if there is any joint estate, it is at least doubtful whether the requisite majority of each class must not be obtained. (*Ex parte Cockburn*, 10 Jur., N. S., part 1, p. 573). It has, however, been suggested by the Lord Chancellor, in the case of *Ex parte Spyer* (*ubi sup.*), that under a trust deed

* The writer wishes it to be clearly understood that, in making the preceding observations, he has had no intention of expressing any opinion upon the policy of the late enactment. His observations are merely intended to call attention to the defective manner in which that policy has been embodied in the recent act.

† It must, however, be admitted, that there are considerable difficulties in reconciling the construction adopted by the Court of Appeal in Bankruptcy with other parts of the act. Thus, as pointed out by the Lord Chief Baron in *Walter v. Adcock* (8 Jur., N. S., part 1, p. 518), the 197th section (which applies to all deeds operating under the 192nd section) is unintelligible, unless some property is assigned which may require the protection of the Court; but the act, probably from alterations made in it in its passage through Parliament, is so incoherent, that it is almost hopeless to put a construction on it which shall make all its parts harmonise.

* Of course, no skill of the draftsman can provide for the validity of the deed in a case where the existence of a concealed debt renders the number of assenting creditors insufficient; but in no other case should the concealment of a debt affect the validity of the instrument.

† See the precautions which are recommended by the Lord Chancellor to be taken in case a composition is paid at the time of the execution of the deed, *supra*. It is evident, however, that the power of taking these precautions must depend on the truth of the bankrupt's statements; hence the advantage to be gained by following the recommendation contained in the text.

some different rule of administration from that which obtains in bankruptcy may be adopted, as, for example, said his Lordship, "that there should be no distinction between joint and separate creditors;" but this is merely an obiter dictum, not necessary for the decision of the case then before the Court, on which, in the absence of an express decision on the point, it would, perhaps, be hardly safe to act. Till the law on this point is authoritatively settled, the safer course would seem to be, to deviate as little as possible from the ordinary practice of bankruptcy.

The 193rd section of the Bankruptcy Act makes further provision for the registration of instruments operating under the 192nd section; and the 194th section provides, that

"Every deed, instrument, or agreement whatsoever, by which a debtor, not being a bankrupt, conveys, or covenants or agrees to convey, his estate and effects, or the principal part thereof, for the benefit of his creditors, or makes any arrangement or agreement with his creditors, or any person on their behalf, for the distribution, inspection, conduct, management, or winding up of his affairs or estate, or the release or discharge of such debtor from his debts or liabilities, shall, within twenty-eight days from and after the execution thereof by such debtor, or within such further time as the Court in London shall allow, be registered in the Court of Bankruptcy, and in default thereof shall not be received in evidence.

As to the effect of this section, see *Hodgson v. Wightman* (9 Jur., N. S., part 1, p. 308) and *Ex parte Morgan* (Id., p. 559).

The 195th section prohibits any deed or instrument requiring registration as aforesaid from being registered, unless, in addition to the ordinary stamp duty, it also be impressed with, or have affixed to it, a stamp denoting a duty computed at the rate of 5s. upon every 100l., or fraction of 100l., of the sworn or certified value of the estate or effects comprised in or to be collected or distributed under such deed or instrument, with a proviso that the maximum of ad valorem duty payable in respect of any such deed or instrument shall be 200l.

And the 197th section provides, that from and after the registration of every such deed or instrument in manner aforesaid, the debtor and creditor and trustees, parties to such deed, or who have assented thereto or are bound thereby, shall, in all matters relating to the estate and effects of such debtor, be subject to the jurisdiction of the Court of Bankruptcy, and shall respectively have the benefit of, and be liable to, all the provisions of this act, in the same or like manner as if the debtor had been adjudged a bankrupt, and the creditors had proved, and the trustees had been appointed creditors' assignees under such bankruptcy; and the existing or future trustees of any such deed or instrument, and the creditors under the same, shall, as between themselves respectively and as between themselves and the debtor and against third persons, have the same powers, rights, and remedies with respect to the debtor and his estate and effects, and the collection and recovery of the same, as are possessed or may be used or exercised by assignees or creditors with respect to the bankrupt or his acts, estate, and effects in bankruptcy; and, except where the deed shall expressly provide otherwise, the Court shall determine all questions arising under the deed according to the law and practice in bankruptcy, so far as they may be applicable, and shall have power to make and enforce all such orders as it would be authorised to do if the debtor in such deed had been adjudged bankrupt, and his estate was administered in bankruptcy.

As to the effect of this section, see *Ex parte Alexander* (32 L. J., Bank., 55)

By the 200th section it is enacted, that if a debtor cannot obtain the assent of a majority in number representing three-fourths in value of his creditors, by reason of his being unable to ascertain by whom bills of exchange, promissory notes, or other negotiable securities accepted, drawn, made, or indorsed by him are holden, or by reason of the absence of creditors in a foreign country, or other similar circumstances, it shall be sufficient if he obtain the consent of a majority in number representing three-fourths in value of all his other creditors to such deed or instrument as aforesaid: provided that notice shall have been inserted by or on behalf of the debtor in one or more newspapers published in the county or place at which he shall have carried on business immediately prior to the date of such deed or instrument, requiring his creditors to signify their assent to, or dissent from, such deed or instrument, by notice in writing, addressed to the trustee or trustees thereof, within fourteen days from the insertion of such notice, and that the affidavit or certificate of the trustee or trustees shall state the circumstances of the case, and the same shall be allowed by the Court; and provided the deed or instrument be in such form as is expressed in Schedule D. to this act annexed, which shall vest all the estate and effects of the debtor in the trustees of such deed; and provided that all such other conditions as are hereinbefore required be duly complied with.

NISI PRIUS SITTINGS, IN AND AFTER MICHAELMAS TERM, 1864.

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In Term.

MIDDLESEX.	LONDON.
1st sitting, Thursday.. Nov. 3	There will not be any sitting during term in London.
2nd sitting, Wednesday .. 9	
3rd sitting, Wednesday .. 16	
For undefended causes only.	

After Term.

Saturday..... Nov. 26	Saturday..... Dec. 10
-----------------------	-----------------------

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The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Court of Common Pleas.

In Term.

MIDDLESEX.	LONDON.
Thursday..... Nov. 3	Monday..... Nov. 7
Wednesday..... 9	Monday..... 14

After Term.

Saturday..... Nov. 26	Thursday..... Dec. 8
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The Court will sit during and after term at ten o'clock.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Exchequer of Pleas.

In Term.

MIDDLESEX.	LONDON.
1st sitting, Thursday, Nov. 3	1st sitting, Monday .. Nov. 7
2nd sitting, Wednesday .. 9	
3rd sitting, Wednesday .. 16	
2nd sitting, Monday 14	

After Term.

Saturday..... Nov. 26	Thursday..... Dec. 8
-----------------------	----------------------

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UNIVERSITY COLLEGE, LONDON.—Professor SHARPE, LL.D., Barrister at Law, Reader of Jurisprudence and Civil Law to the Hon. Society of the Middle Temple, will COMMENCE his COURSE on MONDAY, the 31st October, at 7.5 o'clock P.M. The Professor will deliver a COURSE of TWELVE LECTURES upon the following Subjects:—

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JOHN ROBERT SEELEY, M.A.,
Dean of the Faculty of Arts and Laws.
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October, 18, 1864.

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THE LORD CHANCELLOR AND THE AUTHORISED REPORTS.—*In re Wilcox.*—Mr. Bardwell was about to refer to the case of *Ex parte Maheson*, when he stated that it was not reported in the authorised reports. The Lord Chancellor thereupon remarked—"I do not know what are 'the authorised reports.'" Mr. Bardwell—"I mean the reports which are understood to have the authority of the Court for their accuracy. The Lord Chancellor—"I know of no such reports. I hope no reporter will ever be under the direction of the judge. What report is it? Mr. Bardwell then quoted the case from the "Weekly Reporter," vol. x, p. 256. The Lord Chancellor.—A very excellent publication.

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NOTICE.

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THE JURIST.

LONDON, OCTOBER 22, 1864.

THE learned and able address on law reform, delivered by Sir J. P. Wilde at the recent meeting of the National Association for the Promotion of Social Science (and reported ante, p. 375), has attracted an amount of public attention commensurate with the high reputation of its distinguished author, and the general interest now felt in the subject itself. It would be, perhaps, somewhat premature to say at present that time was when law was "the science of the few—the mystery of the many;" but there can be no doubt that every year increases the number of scientific lawyers, who are also law reformers, and the number of educated laymen, who are qualified to understand and forward the practical amendment of the law. The abundant light which the researches of modern inquirers have thrown upon the history of our jurisprudence has dispelled much of that superstitious reverence which formerly clung to a system whose origin and formation had been little investigated, and whose very absurdities were supposed to be in some way interwoven and connected with the continued growth and prosperity of the country. The euphemistic language in which Blackstone habitually speaks of the then existing state of the law now provokes only a smile, and the student who peruses Lord Coke's celebrated discussion on the antiquity and excellence of the "English customs" (6 Rep., Pref.), and perceives that that great judge really appears to have thought that, at a period before the Roman invasion, "this realm was still ruled with the self-same customs that it is now governed withal," finds some difficulty in understanding how so learned a man could have been so ignorant of the real history of the legal system he had spent his life in studying and administering. Lord Coke, it is true, rather qualifies his broad assertions by adducing proofs of the antiquity of three or four points only of customary law; and it is not probable that many jurists since his time have based their defence of existing abuses on a genuine belief of their primeval antiquity. Yet it is only in comparatively modern times that our legal system has been generally regarded as something which might be investigated without profanation, and modified without sacrilege. Every reader of Twiss's Life of Lord Eldon must remember the piteous lamentations with which his Lordship hailed each successive law reform, and the varied terms in which, in his private correspondence, he constantly reiterated his sincere convictions that the system of legal procedure under which he had grown old, famous, and rich, could not be seriously interfered with without causing great, if mysterious, evils, and bringing on ultimately the decadence and ruin of the country. It is not easy, at the present time, to sympathise with, or even to understand, the state of mind which could suggest these forebodings; and we hardly know whether to be more surprised that so eminent a judge could be so narrow-minded a man, or that so narrow-minded a man could

have attained such eminence as a judge. There is however, little doubt that Lord Eldon's apprehensions met at the time with a degree of sympathy, which is all the more incomprehensible, when we consider the limited scope of the reforms which called them forth. The alarm expressed could hardly have been greater, if it had been proposed at one step to substitute the Codes Napoleon for the existing body of common and statutory law; yet little was actually attempted beyond the removal of abuses, whose simple mention one would have thought would have been their sufficient condemnation. The main rules and principles of our law have not only remained unchanged, but there has been no serious attempt to change even those of them whose expediency has been most questioned. If the institution of the Divorce Court be cited as an instance to the contrary, it must be remembered that the indissolubility of marriage if still maintained as a theoretical principle of our law, had been long departed from by the admission of private divorce acts, which, where the necessary evidence was forthcoming, proceeded with the same regularity as the ordinary litigation in the courts. The system of our law has for the most part remained unaltered, and little more has hitherto been effected or attempted than to render the law itself more accessible to the suitor. Few, if any, of the most inveterate praisers of past times have been bold enough to maintain that expense, delay, and uncertainty in the administration of the law were not in themselves evils; and, as Sir James Wilde has well pointed out, the efforts of law reformers since the year 1828 have been almost entirely directed to the clearing away of these artificial obstacles to the avenues of justice. The progress of reform has, it is true, been very slow. The new pleading rules of 1834 inaugurated a vicious system, which, having been fortunately reduced to an absurdity by the great acuteness of the judges who administered it, has been abandoned among the general congratulations of the profession and the public. Many other mistakes have, no doubt, been made, but if our existing procedure is compared with that of 1828, there can be little question as to the great advance that has taken place. The work of reform in this branch, if not entirely done, is certainly in the way of being done. Common law and equity now vie with each other in celerity and economy, as they formerly competed in delay and expense, and the gradual extension to each of these jurisdictions of those powers and remedies which the experience of the other has shewn to be beneficial, will probably pave the way to a well-considered amalgamation of their functions. The time has come for a further advance, and the consideration of questions of even greater weight and moment than those which have hitherto been entertained. "Is the law itself free from defects of a similar character to those which have disfigured its procedure? To what extent can it lay claim to simplicity, certainty, clearness, and unerring justice? Above all, what can we say of its compactness, whose principles wander at large through the pages of 300 volumes, and the leaves of whose oracles lie as they first fell, scattered and unsewn."

Such are the topics which Sir James Wilde has proposed for present consideration; and it must be admitted that we shall be more fortunate than we have any reason to expect if any general concurrence of opinion upon them can be arrived at within a period of time not greater in length than that which has been consumed in setting in order the mere machinery of the law.

The formation of a digest or authoritative classification of our existing law, is the practical step which Sir James appears to think presses most for our adoption. There can be little doubt that he is right. Before an attempt is made to modify rules of law, it is above all things necessary to understand clearly what those rules really are; and a measure which facilitates the acquisition of this knowledge will be at once the surest preventive of rash and ill-considered alterations, and the best (if not the indispensable) assistant of rational reform. Sir James refers to the well-known works of Comyn and Bacon, as illustrations of the species of digest he would propose. He might, perhaps, have found a more apt example in the recent *Treatise on the Construction of Wills*, by Mr. Vaughan Hawkins. If the industry of an individual barrister has been able to embody in the small number of lucid rules which are found in Mr. Hawkins's work the vast and complicated mass of cases on testamentary construction, the formation of a similar digest of the whole law can present no difficulty worthy of being considered as a real obstacle to so great a national advantage. It is well known that the Lord Chancellor has long been in favour of a similar plan; and we believe that, if it has not been already commenced, the fault does not lie with his Lordship. It is not, perhaps, to be wondered at if the waste of money that has already been caused by some ill-considered projects of law reform, has rendered the Government slow to adopt a scheme whose magnitude must necessarily involve considerable expense. We hope that the recommendations of Sir James Wilde, followed, as we trust they will be, by those of other eminent men, may lead to the carrying out of this great design in a manner worthy of the noble principles of law which form its subject-matter, and of the country on which its fulfilment will confer an inestimable benefit.

Reviews.

Maude and Pollock on the Law of Merchant Shipping.
Third Edition. [H. Sweet.]

THE author of a law book on any subject of importance, who sincerely desires that his work should continue of use to those for whom it is written, undertakes a life-long labour. Month by month, and even day by day, new decisions are pronounced, or old ones overruled, which may affect the propositions laid down in his book, and so, to a certain extent, destroy its value as a book of authority; acts of Parliament, also, are passed, which alter the law on the subject, and perhaps renders part of his work useless, or even unsafe; and thus an author must be ever on the watch to collect materials, and when the proper time arrives, he embodies them in a new edition.

There are few legal subjects to which these remarks will more forcibly apply than the law of merchant shipping. The shipping interest of this country is so enormous, the amount of money invested in it, in one way or another, so large, and the disputes that arise on shipping contracts, and all matters connected with sea risks, consequently so numerous, that the subject is constantly before the Courts, and fresh decisions, either confirming or developing the law, occupy a great part of the reports. Several very important statutes have also been passed of late years, which must necessarily be incorporated in any book professing to give the whole law of shipping.

The Profession, therefore, will, we believe, hail with pleasure the third edition of Messrs. Maude and Pollock's work, which has established for itself a deserved reputation. That it was necessary will appear from the statement of the learned authors in the Preface, "that since the second edition, in 1861, the statute law relating to merchant shipping has undergone further changes; the Admiralty Court Act, 1861, the Merchant Shipping Act Amendment Act, and the Passengers Act Amendment Act, not to mention other statutes of minor importance, have all been added to the written law on the subject. Under the Merchant Shipping Act Amendment Act new and important regulations have been issued for preventing collisions at sea, and these rules have been adopted by the Government of France and of several other countries.

"Many cases have also been decided on the earlier and recent statutes, and open the questions dealt with in this work."

This statement proves the never-ending labour of a conscientious and pains-taking author; and the labour is increased by the tendency of our Courts of late years to admit the American reports and text-books as authorities—or rather, as aids in forming their judgments upon points on which there is no direct authority in this country.

This third edition has been prepared with the same care which marked the two first editions, and appears to contain all the recent statutes, and all the fresh cases of any importance which have been decided since the date of the last edition.

PROCEEDINGS IN BANKRUPTCY.

IN April last the Lord Chancellor, displeased with the accounts of the official assignees and messengers of the Court of Bankruptcy for the Leeds district, requested Mr. Commissioner Ayrton, one of the commissioners there, and Mr. Harding, the well-known London accountant, to institute a rigid examination and scrutiny of all their books, and to report to him on the subject. The result of this investigation turned out to be of so very lamentable a character, that his Lordship, immediately it was made known to him, followed up his request by issuing an order directing a similar proceeding as to the accounts of every official assignee and messenger in all the district courts in the country, with power also to inquire into the manner in which the bills of costs were taxed by the registrars of the various courts. That order was dated the 20th May last, and is as follows:—

"Lord Chancellor.—In Bankruptcy.

"Friday, May 20, 1864.

"Whereas defaults have from time to time been made by several of the official assignees of the Court of Bankruptcy, and serious losses have thereby been occasioned to creditors under bankrupt estates, and it is desirable that such occurrences should be prevented for the future; and whereas, from a recent investiga-

tion directed by me into the accounts of the official assignees and messengers of the Court of Bankruptcy for the Leeds district, it appears to me to be expedient that the books and accounts of every official assignee and messenger of the court should undergo a similar investigation; and whereas I deem it necessary also to inquire into the manner in which the taxation of bills of costs by the registrars, both at Leeds and in the other district courts, is conducted: now, by virtue of the Bankruptcy Act, 1861, and of every authority vested in me, I do hereby give power and authority to William Scrope Ayrton, Esq., one of the Commissioners of the Court of Bankruptcy for the Leeds district, and Robert Palmer Harding, of Bank-buildings, Lothbury, in the city of London, accountant, to make further inquiry into the matter aforesaid in the Court of Bankruptcy for the Leeds district, and also to investigate and make inquiry into such matters in the Courts of Bankruptcy at Birmingham, Bristol, Exeter, Liverpool, Manchester, and Newcastle, and to report fully to me thereon, with power to them to examine such persons, and to call for the production of such books, papers, and proceedings, as they may think fit.

"WESTBURY, C."

We believe the inquiry under this order has been completed, so far as regards the courts at Leeds, Birmingham, Manchester, and Liverpool, and the result is that, besides the discovery of many very gross irregularities, it has been found that large sums of money have been improperly retained, both by the official assignees and by the messengers, which ought to have been paid over to the chief registrar's account—sums, we are told, already amounting in the aggregate to upwards of 14,000*l*. The examinations at Leeds and Birmingham were, we believe, completed in time to be communicated to the Parliamentary Committee on Bankruptcy, and as the evidence taken before that committee, and an appendix containing a variety of documents that were called for, will be printed in the course of a few days, the public will soon have an opportunity of forming a judgment on the importance of the inquiry directed by the Lord Chancellor, and still in course of prosecution, and on the disclosures which have hence come to light. If all we hear be true, we are only afraid that his Lordship will very generally be considered to have been but too lenient with the offenders—to have erred on the side of mercy. We believe it is his Lordship's intention that the inquiry shall be extended to the accounts of the official assignees and messengers acting in London.

COURT OF BANKRUPTCY.—Oct. 19.

[Before Mr. Registrar WINSLOW, sitting for Mr. Commissioner FONBLANQUE.]

Re A TRUST DEED.

Mr. F. P. Campbell applied on affidavits for leave to registrar a trust deed, *nunc pro tunc*, under the following circumstances:—The commissioner in the country, before whom the affidavits were made, had accidentally omitted to initial with his signature some of the pages of the account annexed to the deed, and the registrar of deeds, in consequence, refused to register the instrument. The twenty-eight days allowed for registration by the statute had expired, and it was necessary to have the direction of the court to supply the omission.

The Registrar said it was of the greatest importance that regularity should be observed in such matters, and that the parties in deed cases should have their papers complete. The mistake had not occurred

through the negligence of any officer of that court, and he, therefore, felt bound to refuse the application.

Court Papers.

Court of Queen's Bench.

CROWN PAPER.

Tewkesbury	Reg. v. Severn Navigation Commissioners.
Surrey	Measor. (To stand over till judgment given in the House of Lords in the Mersey Docks case).
Cornwall	Looe Harbour Commissioners v. Churchwardens and Overseers of the Borough of East Looe. (To stand over till judgment given in the House of Lords).
Gloucestershire..	Midland Railway Co. v. Churchwardens and Overseers of the Parish of Badgworth.
Somersetshire ..	Reg. v. Pedlar.
..... ..	Hooker.
..... ..	Sharland.
..... ..	Sherry.
..... ..	Elworthy.
Essex	Dare.
Norfolk	De Caux v. Powley.
..... ..	De Caux v. Powley.
Yarmouth	Reg. v. Purdey.
..... ..	Purdey.
Lincolnshire....	Surveyors of the Highways of Willoughby with Sloothby.
Cheshire	Reg. v. Guardians of the Poor of the Nantwich Union.
..... ..	Guardians of the Congleton Union.
..... ..	Guardians of the Great Boughton Union.
Lancashire	Cleworth.
Kingston-upon-Hull	Caley v. Local Board of Health of Kingston-upon-Hull.
Bedfordshire....	Reg. v. Blufield and Watkin.
Metropolitan Police District..	Williamson v. Bilborough.
Berkshire	Giles v. Siney.
Yorkshire	Yewdall v. Craven.
Durham	North-eastern Railway Co. v. Council of the Borough of South Shields.
Staffordshire....	Shepherd v. Postmaster-General.
Glamorganshire.	Reg. v. Aldermen and Burgesses of the Borough of Aberavon.
Coventry	Smith v. Watson.
Merionethshire..	Williams v. Pugh.
Durham	Buckle v. Wrightson.
Huntingdonshire	Maule v. Local Board of Health of the Borough of Godmanchester.
Yorkshire	Watson v. Martin.
..... ..	Whiteley v. Armitage.
Dorsetshire	Reg. v. Brickell.
Tynemouth.....	Burn v. Helm.
Devon	Bowden v. Clerk of the Peace of the County of Devon.
Surrey	Pugh v. Metropolitan Board of Works, and Collins and Howell.
Yorkshire	Local Board of Health of Keighley v. Churchwardens and Overseers of the Parish of Keighley.
Rochester	Board of Health of Chatham v. Rochester Pavement and Roads Commissioners.
Kent	Winefrith v. Pankhurst.
Northamptonsh..	Great Western Railway Co. v. Baillee.
Leicestershire...	Melton Mowbray Highway Board v. Inhabitants of the Parish of Ashby Folville.
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Newport, Monmouthshire..	Newport and Pillgwenly Waterworks Co. v. Davis.
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Newport, Monmouthshire ..	Davis v. Newport and Pillgwenly Water-works Co.
Preston	Birch v. Turner.
Lancashire	Raby v. Seed.
Weymouth and Melcomb Reg.	Mayor and Aldermen of the Borough of Weymouth & Melcomb Regis v. Nugent.
Cardigan	Appet v. Jones.

Court of Exchequer.

SITTINGS—MICHAELMAS TERM.

<i>Days in Term.</i>		<i>Banc.</i>
Wednesday	Nov. 2	Motions and Peremptory Paper.
Thursday	3	Errors, Peremptory Paper, and Motions.
Friday	4	.....
Saturday	5	.....
Monday	7	Special Paper.
Tuesday	8	.....
Wednesday	9	Special Paper. Lord Mayor sworn.
Thursday	10	.....
Friday	11	.....
Saturday	12	Criminal Appeals. Sheriffs nominated.
Monday	14	Special Paper.
Tuesday	15	.....
Wednesday	16	Special Paper.
Thursday	17	.....
Friday	18	.....
Saturday	19	.....
Monday	21	Special Paper.
Tuesday	22	.....
Wednesday	23	.....
Thursday	24	.....
Friday	25	.....

<i>Days in Term.</i>		<i>Nisi Prius.</i>
Thursday	Nov. 3	Middlesex, first Sitting.
Monday	7	London, first Sitting.
Wednesday	9	Middlesex, second Sitting.
Monday	14	London, second Sitting.
Wednesday	16	Middlesex, third Sitting.

NEW TRIALS.

FOR JUDGMENT.

Gloucester—Great Western Railway Co. v. Robins

FOR ARGUMENT.

Moved Hilary Term, 1864.

Liverpool—Brabner v. Macann (Ordered to keep its place until the special case is settled)

Moved after the 4th day of Trinity Term, 1864.

Middlesex—Norton v. Blackie.

SPECIAL PAPER.

FOR ARGUMENT.

Earl of Lonsdale v. British & Irish Magnetic Telegraph Co. (Limited) (D., to stand over till after argument of Sp. C.)	Clark v. Magnus (D., not to be argued till after issues in fact tried, by order of Pigott, B.)
	Longland v. Andrews (Sp. C.)
	Longland v. Doling (Sp. C.)

PEREMPTORY PAPER.

To be taken on the first Day of Term after the Motions, and to be proceeded with the next Day, if necessary, before the Motions.

In re Tracksell and Clayton v. Wilson (Payment of money under award)

Same v. Same (To set aside award)

Taylor v. Holt (To set aside verdict for plaintiff, and enter verdict for defendants or a nonsuit).

ERRORS AND APPEALS.

FOR ARGUMENT.

Benham v. Broadhurst (E., part heard)
Raphael v. Davis (E.)

Green & an. v. Attenborough (Ap.)
Hanser v. Lermitt (E.)
Hidson & an. v. Barclay (E.)

CIRCUIT BUSINESS.—A paragraph appeared in *The Times* a few days since, shewing the number of causes disposed of on each circuit in England and Wales in 1861 and 1862. The total amount recovered in 1862 on promissory notes, &c., was 14,764*l.*, against 17,574*l.* in 1861; on bonds, 457*l.*, against 302*l.* in 1861; for goods sold and delivered, 13,146*l.*, against 9597*l.* in 1861; for work and labour done, 4384*l.*, against 3365*l.* in 1861; for money paid, advanced, &c., 5329*l.*, against 6517*l.* in 1861; for money received, 3714*l.*, against 3816*l.* in 1861; for compensation for personal injuries, 9514*l.*, against 14,525*l.* in 1861; for compensation for other injuries, 6873*l.*, against 1870*l.* in 1861; for replevin or distress for rent, 1129*l.*, against 829*l.* in 1861; trover or detinue, 4671*l.*, against 5346*l.* in 1861; for breach of contract, 10,256*l.*, against 13,277*l.* in 1861; upon special contracts, 31,906*l.*, against 47,853*l.* in 1861; for breach of warranty, 1635*l.*, against 98*l.* in 1861; for infringement of patents, nil, against 2*l.* in 1861; for recovery of land, &c., 1422*l.*, against 2*l.* in 1861; trespass relative to land, &c., nil, against 7314*l.* in 1861; questions on wills, 3308*l.*, against nil in 1861; for breach of promise of marriage, 1830*l.*, against 3800*l.* in 1861; seduction, 740*l.*, against 707*l.* in 1861; libel, 315*l.*, against 1498*l.* in 1861; slander, 888*l.*, against 1016*l.* in 1861; malicious prosecution, 80*l.*, against 590*l.* in 1861; false imprisonment, 239*l.*, against 380*l.* in 1861; assault, 469*l.*, against 843*l.* in 1861; and other suits, 11,229*l.*, against 26,704*l.* in 1861; making a total of 128,298*l.*, against 167,325*l.* in 1861, and 79,777*l.* in 1860. In 1422 causes tried in 1862, verdicts for the plaintiff were given in 836 cases; in 178 cases, verdicts for the defendants; and in 408 cases nonsuits were either entered or jurors were withdrawn, &c.

THE HIGHWAY ACT, 1862.—At the quarter sessions held for the county of Monmouth, at Usk, on Monday last, Lord Llanover, who had acted as chairman of the Committee of Justices, moved that the provisional orders for the adoption of the act throughout the county, which were made at the previous sessions, be confirmed. Lord Tredegar seconded the motion, which was supported by Colonel Clifford, M.P., Mr. Morgan, M.P., and others. Captain Tyler opposed it; and Sir Thomas Phillips moved, and Mr. Williams, of Llanjibby Castle, seconded, an amendment that the further consideration of the subject be adjourned to the January sessions. On the question being put from the chair, the original motion was carried by a large majority. The election of waywardens was then fixed for the 25th March, and the first meeting of the board will take place on the 31st March.

WEST RIDING ASSIZES.—An Order in Council some time ago directed, that prisoners committed for offences in the West Riding of Yorkshire should no longer be sent to York Castle to await their trial at the assizes, but since an assizes for the West Riding was to be held at Leeds, they should be committed to either the Leeds Gaol or the Wakefield House of Correction. Under these circumstances, the West Riding magistrates have sought to relieve themselves from the payment of about 3000*l.* a year, which they have hitherto had to make towards the expenses of the

Castle; and they appointed a committee some time ago to confer with the North and East Riding justices on the subject. In the deliberations which followed, it turned out that the contributions of the three Ridings were in the following proportions:—West Riding, 13s.; North Riding, 3s. 9d.; East Riding, 3s. 3d. The West Riding justices suggested, that in future the West Riding should only be charged the average daily cost for each prisoner sent from their Riding to the Castle; but the North and East Riding magistrates were in a majority, and carried a resolution, deciding that the expenses of the establishment and fabric should be borne by each Riding according to the rateable value of each, and the cost of each prisoner be as before suggested. As in the Castle there were only six debtors, and one criminal from the West Riding (the criminal being retained at the Governor's request, in order that he might assist in clearing the wards), the committee recommended that an act of Parliament should be applied for, authorising the sale, lease, or other disposal of the West Riding interest in York Castle, and relieving the West Riding from further contributions to that establishment. The same course they recommended should be taken with reference to the judges' lodgings at York, which were originally purchased at a cost of 6000*l.*, of which sum the West Riding paid 2787*l.* On Monday these matters came before the West Riding court of quarter sessions at Leeds, and Mr. Greenwood stated, with respect to the judges' lodgings, that the North and East Riding magistrates were anxious to get rid of them, their opinion being that the judges of assize would be much better accommodated at the Royal Station Hotel. After a good deal of discussion it was agreed, that as, since the holding of assizes at Leeds, York Castle was useless to the West Riding, steps be taken to obtain an act of Parliament, if, after further conference with the North and East Riding magistrates, it should be necessary. The committee are to report, at the Wakefield sessions in January, whether any agreement has been come to, and the West Riding Court will then determine whether a copy of a proposed bill, which is then to be presented to them, shall be proceeded with.

A CASE occurred on Wednesday at the Westminster Police Court, before Mr. Arnold, under a clause in the Fraudulent Trustees Act, of which the following are the particulars:—

Mr. Dunbar John Cother, late of 26, Denbigh-street, Pimlico, barrister-at-law, was charged on a warrant with fraudulently converting two bills of exchange for 100*l.* to his own use, the same being a larceny under the 24 & 25 Vict. c. 96, s. 3.

Mr. Butler Rigby, barrister, prosecuted; and Mr. Edward Lewis, of Marlborough-street, defended.

Prisoner had been remanded for a week, but being unable to find the required bail, two sureties of 100*l.* each, he was brought up from the House of Detention.

Mr. Rigby said that he appeared on behalf of Mr. Charles Parker, a gentleman residing at Bentley, near Doncaster, to prosecute the prisoner for misappropriating two bills of exchange, and the proceeds thereof. The prisoner advertised in the name of "Junius," 103, Jermyn-street, St. James's, to get money for gentlemen, and also to cash bills of exchange, referring persons to a gentleman of the name of Collins. He became acquainted in this manner with Mr. Parker, the complainant, in September, and he volunteered to obtain discount for him on two bills of exchange of 50*l.* each. Having first ascertained that the reference was correct, Mr. Parker sent two blank acceptances and stamps to cover 50*l.* each to prisoner, for the purpose of getting them cashed and handing over

the proceeds to him. They remained in his possession for some time, and Mr. Parker made several applications for the proceeds, but could never get the money. He received various letters from the prisoner. It was sufficient to say, he made all sorts of excuses, and in one he admitted putting part of the proceeds on a horse-race, in betting upon which his client indulged. Mr. Parker would tell the magistrate that he never authorised the prisoner to bet with that money, and complainant finding that he could not get the money, came to town and saw the prisoner about the bills who referred him to a Mr. Collins. Collins told complainant that the bills had been discounted, but would not tell him the holders of the bills. He said, "You will know soon enough, for if they are not paid when they become due, you will be sued for the value." He would prove that the prisoner had received the proceeds of the bills, and that he had never handed one farthing to Mr. Parker, and then leave the matter in his worship's hands. He then called Mr. Parker.

Mr. Lewis having ascertained that the proceedings were taken under the 3rd section of the act, submitted that there was no case in which his worship could adjudicate. In the case of *Reg. v. Vassall* it was held, that the bailment intended by the 20 & 21 Vict. c. 54, s. 4, was a deposit of something in itself to be returned, and therefore a person with whom money was deposited, who was under an obligation to return the amount, but not the identical coin, was held not to be a bailee of the money within that section.

After some further legal discussion,

Mr. Arnold observed, it was a very important case, and as Mr. Rigby did not seem prepared to reply to Mr. Lewis's objection, he would remand the case for a week. After the case Mr. Lewis had quoted, which he thought bore very strongly on the present prosecution, and as the prisoner had not been able to find the required sureties for his reappearance, and consequently been a week in prison, he would take his personal recognisance in 200*l.* for his reappearance that day week, entertaining, as he did, a strong impression of the force of Mr. Lewis's argument.

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THE JURIST.

LONDON, OCTOBER 29, 1864.

THE case of *Topping v. Keysell* (10 Jur., N. S., part 1, p. 774; 33 L. J., O. P., 225) raises, and does not decide, the question, how far trustees under a deed of composition are clothed with the rights and powers of assignees in bankruptcy. The facts of the case were—that the debtor, being indebted to several creditors, assigned to B., one of them, all his property, by bill of sale, nominally for further advances of goods, but really for the debt already due. A few days afterwards another creditor, C., applied to the debtor for payment of his debt, and was told by him, that all the property on the premises was already assigned to the former creditor for 90*l*., which he owed him. C. then took goods in discharge of his debt. The next day, B., having made no further advance, entered and took possession under his bill of sale, and sold off the property. A third creditor having filed a petition for adjudication in bankruptcy against the debtor, which was not proceeded with, the debtor executed a deed of assignment to trustees, under sect. 192 of the Bankruptcy Act; the deed of assignment conveyed the effects already included in the bill of sale. The trustees then claimed from C. the goods which he had taken in discharge of his debt, and the principal point in the case was, whether the title of the trustees dated from the execution of the deed of assignment, or could be retrospective, as in the case of assignees in bankruptcy.

The 197th section of the Bankrupt Act enacts, "that the existing or future trustees of any such deed or instrument, and the creditors under the same, shall, as between themselves respectively, and as between themselves and the debtor and against third persons, have the same powers, rights, and remedies, with respect to the debtor and his estate, and effects, and the collection and recovery of the same, as are possessed or may be used or exercised by assignees or creditors with respect to the bankrupt, or his acts, estate, and effects in bankruptcy; and, *except where the deed shall expressly provide otherwise*, the Court shall determine all questions arising under it according to the law and practice in bankruptcy."

It was argued on behalf of the creditor D., that the trustees under the deed were in the same position as assignees of a bankrupt who was adjudicated bankrupt on his own petition; in which case the petition is considered the act of bankruptcy, and the only act of bankruptcy to which there can be any relation back; so that dealings by the bankrupt with his property anterior to his petition are protected. On the other hand, it was argued for the trustees, that they were in the same position as assignees of a bankrupt where the petition for adjudication is filed by a creditor. The judgment of the Court, unfortunately, lays down no general rule, and leaves the application of the section and the rights of the trustees to be governed by the terms of each particular deed. The Chief Justice rests his judgment upon the ground, "that the deed

being executed according to the provisions of the 192nd section, conveyed the whole of the debtor's property, and was intended to give the creditors the same rights as would be given by a bankruptcy." Now, these expressions appear to leave the point which had been argued still undecided. There is no doubt the trustees are to have the rights of assignees in bankruptcy, but the question is, whether the bankruptcy is to be considered as founded on the bankrupt's petition or on a creditor's petition. The question, surely, cannot be decided by the language of the deed, which is the language of the bankrupt himself. It cannot be that he, and not the law, is to regulate the rights of his creditors, unless the words in the 197th section, "and, except where the deed shall expressly provide otherwise, the Court shall determine all questions arising under the deed, according to the law and practice in bankruptcy, so far as they may be applicable," enable him to do so; but even these words leave the question open, for the law of bankruptcy is, that in case of a bankruptcy on a debtor's own petition, there is no relation back. We, therefore, must think that the ground on which the Chief Justice rests his judgment is hardly satisfactory, and at all events it lays down no rule which can serve as a guide in other cases.

Mr. Justice Willes is of opinion, that the 197th section confers upon the trustees "rights at least equal to those of assignees where a trader has become bankrupt on his own petition;" and he adds, "Now, which of these different relations am I to apply to the administration of the debtor's property under the present deed, where the terminus a quo—the point of time when the title of the trustees is to commence—is not stated by the Legislature. I will not say that in all cases the trustees under deeds within the 197th section possess the right of carrying back their title to an earlier period than the date of the deed, because it must be remembered, that the better opinion seems now to be, that it is not necessary that the whole, or any part, of the debtor's property should be assigned by such deeds, but that an undertaking to pay a certain composition, is within the act of Parliament. There may, therefore, be some doubt what are the rights of the trustees under such deeds as these, in disputes similar to that which arises in the present case. Such a question would certainly present very considerable difficulty. It may be that there is no power in the trustees to collect the funds beyond that which is provided by the debtor." His Lordship then expresses his opinion, that where a debtor conveys his whole estate under such a deed, all the estate must be intended which could be vested in assignees under a bankruptcy.

This judgment, therefore, also leaves the application of sect. 197 to be governed by the language of the deed. The judgment of Mr. Justice Byles is founded on the fact, that in the particular case a creditor had petitioned for an adjudication in bankruptcy, although it was subsequently abandoned. He admits the difficulty of the general question, and leaves it undecided.

One thing, therefore, seems clear, from this judgment, that a deed under the 197th section may be so

worded as to secure and protect transactions which would be void under a bankruptcy founded on a petition by a creditor, and that without such language such transactions are not protected as against the trustees, if the debtor conveys all the property to them; as by such a conveyance it must be intended that he conveys all the property which would pass to his assignees on a bankruptcy so founded. The probability is, that many questions will arise in consequence of this decision on the construction and effect of such deeds. So far as we can judge from the deeds which have been before the Court, creditors appear to be willing to let the debtor keep his property and pay a composition; and in such cases any previous dealings with his estate will not be interfered with. We suppose the answer is, that the creditors look closely into the debtor's previous conduct, and are not likely, if they think he has been guilty of fraudulent preference, or other irregular dealings, to acquiesce in it—they would then make him a bankrupt, and invalidate such transactions. This may be the case; but there can be no reason why sect. 197 should not have been more explicit and satisfactory as to the rights of trustees under these deeds, unless, indeed, it be, that had it been clear and easy of construction, it would by the contrast have added to the censure and abuse which have been heaped upon its unfortunate neighbour. (Sect. 192).

There was another point argued in the case of *Topping v. Keysell*, namely, whether the communication made by the debtor to the creditor C., that he had executed the bill of sale to B., was notice to C. of an act of bankruptcy. The county court judge, from whose decision the case in the Common Pleas was an appeal, directed the jury that it was not notice of an act of bankruptcy, and asked them whether they thought the debtor was "coaxed" out of the goods by C. We were aware that pressure by a creditor on a debtor for payment of his debt, such as a threat of legal proceedings, prevented a transaction being a fraudulent preference; but "coaxing" is a new term in the law. Willes, J., observes, "I am at loss to understand what the learned county court judge could have meant by saying, that if the bankrupt had been 'coaxed' out of his property, the transfer of the goods was not voluntary. If the transfer was substantially a voluntary one, it does not matter whether the bankrupt was 'coaxed' or not. If an influence of this nature were to be held available, it would be necessary to have some legal definition of what 'coaxing' is."

THE MARRIAGE LAW*.

(From the Times).

IN the month of June, 1863, Lord Chancellor Westbury brought in his bill for the revision of our statute law. After pointing out the evils arising from the enormous amount of uncertainty contained in the decisions of our Courts, as shewn by the reported

cases, and after stating that our statute-book was a mass of enactments and statutes which are in a great degree discordant and irreconcilable, he went on to say, that it was to the form of a code that the law of any advanced nation ought to be reduced. The judge of the Court of Probate, at the late meeting of the Society for Promoting Social Science, made want of system and harmony in our laws the groundwork of his admirable address; but he did not propound as a remedy, even if our statute law were revised and consolidated, or our reports were weeded of unsound and conflicting decisions, a code; but he recommended that a digest should be the ultimate embodiment of our laws. "A code," he says, "is the offspring of large and comprehensive views, and should deal with all subjects as a whole. A digest with a narrower aim may properly be worked out piecemeal." From this we infer that a code must necessarily, as the Code of Justinian and the Code of Napoleon, contain all the extant law; but is this so? The term "code" is not, perhaps, the most appropriate for the reformers of our law; it implies too much. According to the meaning it has acquired, a code is to comprise the whole body of the law of a State when reduced into a systematic form. Thus, the Lord Chancellor told the Legislature, "that a code should be the ultimate form into which our laws should be reduced; but, as the law is still in a state of transition, we must wait until it is settled." With the varying circumstances arising almost from day to day in our transactions, our law must ever remain in a state of transition; and if we are to wait until it is on all points definitively settled, we shall never get an epitome or consolidation of our laws in the shape of a digest or a code, or any other form. If a digest may be worked out piecemeal, as Sir James Wilde thinks it may, why not a code? Each branch of our law might be treated separately, and those which are settled or supposed might be summarily dealt with without delay. In the volume before us, this is done with regard to the law of marriage, at one time a very complex subject; but the decisions of our Courts, and the statutes regulating it, have made it pretty clear and definitive, so that we have here the law of marriage enunciated in abstract propositions, arranged in a concise and logical sequence under different heads. We conceive the law as set forth by Dr. Waddilove to be sound, and if so, any person may at a glance learn what constitutes a valid marriage, and what does not, and in what manner it may be contracted. One object of the work appears to be to shew, that one branch of our law may be codified without waiting until our statute-book has been revised and expurgated. This would appear a self-evident truth; but the words of Lord Chancellor Westbury seem to tend towards a different doctrine. His Lordship, in introducing his bill for the revision of our statutes, expressed a hope that the complete revision and expurgation of our statute-book would be effected in a year; more than that time has elapsed, but we have heard no more on the subject. We hope that during that time progress has been made in the work; but we would wish to learn something to relieve us from suspense, and we trust that his Lordship, having made this promise to the ear, will not break it to the hope.

The Lord Chancellor will receive the judges, Queen's counsel, &c., at his Lordship's residence, No. 1, Upper Hyde Park-gardens, on Wednesday, the 2nd November next (the first day of Michaelmas Term), at twelve o'clock.

RECORDERSHIP OF POOLE.—Henry Bullar, Esq., has been appointed Recorder of Poole, in the room of James Stephen, Esq., resigned.

* The Laws of Marriage and the Laws of Divorce of England in the Form of a Code. Arranged by Alfred Waddilove, D.C.L.—Longman & Co.

TWO OLD LETTERS.

It is so seldom that the "lay" side of legal antiquities is brought to light, that a letter, which is to be found in the Rev. Joseph Stevenson's recent volume of "Letters and Papers illustrative of the Wars of the English in France, during the Reign of Henry VI," is of especial interest. The letter appears to be written on the 3rd September, 1440, by Mrs. Isabella Wydecombe (Widdicombe), formerly Mrs. Miles, to her son, William Miles, then a merchant at Rone (Rouen). The letter runs thus:—

"Worschepfulle and right enterly welbelovyd sone: I commande me unto yow with alle my herte, desyringe alle tymes to here and knowe of youre good prosperyte and welfare, whiche I praye to Almyghtye God send yow ever after youre owne hertes desire, to His plessaunce. And plesse hit yow to knowe of my welfare; the daye of this letter makyng I was in good helthe of body, blessed be oure Lorde Gode. Furthermore, I lete yow wyte that youre fader ys dede, whiche passede of this worlde at Cresmasse was xij. yere; on whos soule Almyghty Gode have mercy, for his heye Godhede! Also William Myles youre uncle, and Janet Brokhamptone, youre suster, ben dede bothe, on whos saules God have mercye! And Richard Milles youre brother, and Jonet youre suster, ben alyve and faren welle, and recomaundethe hem unto yow with alle here hole hertys. And Cristyan Artoure, youre cosyn, lyveth and farethe welle, belesede be Gode. And also I lete yow wyte that the place in Corylonde, and which scholde falle unto you by dessent after deses of youre fader forsayde, ys sesyde into the cheffe lordes handes of the fee for defaulte of claym of yow; the whiche youre friendes wolde have sewede out, yf theye hadde wyst or known that ye hadde been alyve. Wherefore and hit plesse yow to wryte youre letters of attorney unto Thomas Mucheldever and to John Wydecombe, my hoebande, dwellyng in the parische of Mertokeyn in Somersetschire, to sewe for the seyde place in Corylonde in youre name, and also a letter of youre wyll what schal be done therto, and they wollen bothe done here trewe dyligence therto with alle here hortys, with oute feynynge. And, righte worschepfulle sone, I bespeke yow of alle gentelnesse, and hit plesse yow, to sende me a letter of youre welfare, and how hit standythe with yow, the wheche I hertely desyre to knowe, as Gode wote, wheche have yow in His blessed kepyng, to his plessaunce evermore duryng. Wryten at Mertokeyn forsayde, the iij. day of Septembre. By youre moder,

"ISABELLE MILLES."

It does not appear what the tenure of the "place in Corylonde" was, or whether it had fallen into the "cheffe lordes handes," as escheated, or had merely been "sesyde" quousque for want of a tenant. One would not willingly think badly of Mrs. Widdicomb, but a suspicion will come into the mind, that the worthy lady would, twelve "yere" having already passed, never have informed Master Miles of his "fader's" death, if it had not been for the seizure by the chief lord for default of "claym of yow." If the seizure was of freeholds on account of escheat, the letter would seem to shew, that although 150 years had elapsed since the Statute of Quia Emptores, the chief lords had not yet commenced to neglect their escheats, but that then, as at the passing of the statute, the loss of escheats would be regarded "as very hard and extreme to those lords and other great men."

There is another letter, which appears to have accompanied Mrs. Widdicomb's to Master Miles, given in the same work. It is from Sir Thomas Laidamis, "parson" of St. Martin of Wareham. The Rev. Knight's letter is rather of interest to the trader than the lawyer; but as it seems to be an ancient precedent for that common-form phrase of unlearned letter-writers,—“so no more at present,”—we subjoin it here:—

"Worsypfulle and reverent frend and mayster, Y recomande me to youe wyth alle my hert, desyringe to here and to knowe of youre welfare by letter, how hyt stondyth wyth youe. Doynge youe to understand that ye and Y where scollifelaus sumtyme at Holymyster, ye beyng at borde att More ys howse, the whyche he recomande me to youe. Also, Y pray youe that ye wolde be gode mayster and frend to me for a mylstone, four Y have ypray John Penylle to by one for my mayster. Wherefore Y pray youe that ye wyll be gode mayster and frend there to. Also Y pray youe that ye wyll sende me worde, yn the most secre wyse, what yt costyth; for trwly Y wulle chentylmanly aquyte youre labour by that nex messangere that comyth by twyne youe and me. Also yff ye wulle sende eny worde to youre modyr, sendyth to me to Warham, and Y wyll trewly do youre erant. No more to youe att thys tyme, but the Wholy Trynity have youe in ys kepyng. Ywrytyn at Warham, the Monday nex byfore Sent Mathew ys day. Also Y have ysende youe to letters fro youre modyre wyth this letter. By youre owne frend,

"Sir ROBERT LAIDAMIS,
"Parson of Martyne of Warham."

It is to be hoped that, for his temporal advantage with his "mayster," the reverend gentleman obtained his millstone; and that, for the credit of the Church, he did not fail "gentlemanly" to requite Master Miles for his labour.

Court Papers.

EQUITY SITTINGS, MICHAELMAS TERM, 1864.

Before the LORD CHANCELLOR.

At Westminster.

Wednesday .. Nov. 2 { Appeal Motions and Appeals in Bankruptcy.

At Lincoln's Inn.

Thursday	3	Petitions and Appeals.
Friday	4	Appeals.
Saturday	5	Appeals in Bankruptcy and Appeals.
Monday	7	} Appeals.
Tuesday	8	
Wednesday	9	Appeals in Bankruptcy and Appeals.
Thursday	10	Appeal Motions and Appeals.
Friday	11	Appeals.
Saturday	12	Appeals in Bankruptcy and Appeals.
Monday	14	} Appeals.
Tuesday	15	
Wednesday	16	Appeals in Bankruptcy and Appeals.
Thursday	17	Appeal Motions and Appeals.
Friday	18	Appeals.
Saturday	19	Appeals in Bankruptcy and Appeals.
Monday	21	} Appeals.
Tuesday	22	
Wednesday	23	Appeals in Bankruptcy and Appeals.
Thursday	24	Petitions and Appeals.
Friday	25	Appeal Motions and Appeals.

*Before the LORDS JUSTICES.**At Westminster.*

Wednesday .. Nov. 2 Appeal Motions.

At Lincoln's Inn.

Thursday 3 Appeal Motions and Appeals.

Friday 4 { Petitions in Lunacy, Appeal Petitions, and Appeals.

Saturday 5 { Appeals.

Monday 7 { Appeals.

Tuesday 8 { Appeals.

Wednesday 9 { Appeals.

Thursday 10 Appeal Motions.

Friday 11 { Petitions in Lunacy, Appeal Petitions, and Appeals.

Saturday 12 { Appeals.

Monday 14 { Appeals.

Tuesday 15 { Appeals.

Wednesday 16 { Appeals.

Thursday 17 Appeal Motions and Appeals.

Friday 18 { Petitions in Lunacy, Appeal Petitions, and Appeals.

Saturday 19 { Appeals.

Monday 21 { Appeals.

Tuesday 22 { Appeals from the County Palatine of Lancaster and Appeals.

Wednesday 23 { Appeals.

Thursday 24 { Appeals.

Friday 25 { Petitions in Lunacy, Appeal Motions, and Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

*Before the MASTER OF THE ROLLS.**At Westminster.*

Wednesday .. Nov. 2 Motions.

At Chancery-lane.

Thursday 3 { General Paper.

Friday 4 { General Paper.

Saturday 5 { Petitions, Short Causes, Adjourned Summonses, and General Paper.

Monday 7 { General Paper.

Tuesday 8 { General Paper.

Wednesday 9 { General Paper.

Thursday 10 Motions and General Paper.

Friday 11 General Paper.

Saturday 12 { Petitions, Short Causes, Adjourned Summonses, and General Paper.

Monday 14 { General Paper.

Tuesday 15 { General Paper.

Wednesday 16 { General Paper.

Thursday 17 Motions and General Paper.

Friday 18 General Paper.

Saturday 19 { Petitions, Short Causes, Adjourned Summonses, and General Paper.

Monday 21 { General Paper.

Tuesday 22 { General Paper.

Wednesday 23 { General Paper.

Thursday 24 { General Paper.

Friday 25 Motions and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.**At Westminster.*

Wednesday .. Nov. 2 Motions.

At Lincoln's Inn.

Thursday 3 General Paper.

Friday 4 { Petitions, Adjourned Summonses, and General Paper.

Saturday Nov. 5 { Short Causes, Adjourned Summonses, and General Paper.

Monday 7 { General Paper.

Tuesday 8 { General Paper.

Wednesday 9 { General Paper.

Thursday 10 { Motions, Adjourned Summonses, and General Paper.

Friday 11 { Petitions, Adjourned Summonses, and General Paper.

Saturday 12 { Short Causes, Adjourned Summonses, and General Paper.

Monday 14 { General Paper.

Tuesday 15 { General Paper.

Wednesday 16 { General Paper.

Thursday 17 { Motions, Adjourned Summonses, and General Paper.

Friday 18 { Petitions, Adjourned Summonses, and General Paper.

Saturday 19 { Short Causes, Adjourned Summonses, and General Paper.

Monday 21 { General Paper.

Tuesday 22 { General Paper.

Wednesday 23 { General Paper.

Thursday 24 { General Paper.

Friday 25 { Motions, Adjourned Summonses, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

*Before the Vice-Chancellor Sir JOHN STUART**At Westminster.*

Wednesday .. Nov. 2 Motions.

At Lincoln's Inn.

Thursday 3 Causes.

Friday 4 Petitions and Causes.

Saturday 5 Short Causes and Causes.

Monday 7 { Causes.

Tuesday 8 { Causes.

Wednesday 9 { Causes.

Thursday 10 Motions and Causes.

Friday 11 Petitions and Causes.

Saturday 12 Short Causes and Causes.

Monday 14 { Causes.

Tuesday 15 { Causes.

Wednesday 16 { Causes.

Thursday 17 Motions and Causes.

Friday 18 Petitions and Causes.

Saturday 19 Short Causes and Causes.

Monday 21 { Causes.

Tuesday 22 { Causes.

Wednesday 23 { Causes.

Thursday 24 { Causes.

Friday 25 Motions.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

*Before the Vice-Chancellor Sir W. P. WOOD.**At Westminster.*

Wednesday .. Nov. 2 Motions.

At Lincoln's Inn.

Thursday 3 { General Paper.

Friday 4 { General Paper.

Saturday 5 { Petitions, Short Causes, and General Paper.

Monday 7 { General Paper.

Tuesday 8 { General Paper.

Wednesday 9 { General Paper.

Thursday 10 Motions and General Paper.

Friday 11 General Paper.

Saturday .. Nov. 12	Petitions, Short Causes, and General Paper.
Monday	14
Tuesday	15
Wednesday	16
Thursday	17
Friday	18
Saturday	19
Monday	21
Tuesday	22
Wednesday	23
Thursday	24
Friday	25

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

COMMON-LAW CAUSE LISTS, MICHAELMAS TERM, 1864.

Court of Queen's Bench.

NEW TRIALS.

FOR ARGUMENT.

Moved Trin. Term, 1862.

Tried during Term.

Midd.—Tennant v. Bankart
(Part heard, stands for arrangement)

Moved Easter Term, 1864.

Liverp.—Wilson v. Rankin
(To be argued with D.)

Chea.—Hughes v. Birkenhead
Improvement Commissioners
(To be argued with D.)

Chester—Hughes v. Birkenhead
Improvement Commissioners (Second action
to be argued with D)
— Davies v. Same (Ditto)

Tried during Term.

Midd.—Healey v. Thames
Valley Railway Co.

Moved Trin. Term, 1864.

Midd.—Downing v. Wiseman

Tried during Term.

Midd.—Judkins v. Mansfield.

SPECIAL PAPER.

Those marked thus * are Special Cases, and thus † Demurrers.

FOR ARGUMENT.

†Worthington v. Sudlow (Sp. C. to be stated)

†Moore & ora. v. Stroud
(Stands over till issues in fact tried)

†Hughes v. Birkenhead Improvement Commissioners
(Case in New Trial Paper to be argued with this D.)

†Same v. Same (Ditto)

†Davies v. Same (Ditto)

†Goddard v. Wellburn

†Wilson v. Rankin (Case in New Trial Paper to be argued with this D.)

†Taylor v. Holloway

*Gledstones & ora. v. Corporation of the Royal Exchange

*Brewer v. Great Western Railway Co.

*Sterling v. Maitland & an.

†Longhurst v. Haynes

†Williams v. Booth & an.

†Keyes v. Elkins

†Thierry & an. v. Lord Fermoy & an.

†Webb v. Barber & ora.

†Collins v. Willmott

†Neild & ora. v. Hunt

†Pawle v. Pearse

*Giffard v. Wright

*Mercantile Marine Insurance Co. (Limited) v. Thitherington

†Unity Joint-stock Mutual Banking Association v. Bunyard

†Lucas v. Welsman

†Lloyd v. Harrison

†Offenbacher v. Child

*Simpson & ora. v. Mount

†In re R. B. Feather v. Reg.

*Bryant v. Foot

†Head v. Bush

†Jones v. Morris

†Duthie v. Hughes

†Smith v. Chantrell

†Alexander v. North-eastern Railway Co.

ENLARGED RULES.

First Day.

Roberts v. Evans

In re R. B. Feather v. Reg.

Reg. v. Lord Mayor and Aldermen of the City of London

Reg. v. Commissioners for the Reduction of the National Debt

Reg. v. Midland Railway Co.

Reg. v. D. Jenkins & an.

Reg. v. T. L. Roberts & an.

CROWN PAPER.

Lancashire Pope v. Whalley.

Devonshire Mayor. &c. of South Molton v. Churchwardens of South Molton.

Middlesex Fisher v. Howard.

Court of Common Pleas.

NEW TRIALS.

FOR ARGUMENT.

Moved Mich. Term, 1863.

Midd.—Packer v. The Great Western Railway Co. (To stand till Beal v. South Devon Railway Co. in Exch. Chamber is disposed of)

Moved Trin. Term, 1864.

Midd.—Lindley v. Lacey

— Cox v. Angell

Lond.—Moon v. Hall

— Robinson v. Collingwood

Lond.—Inchbald v. Western Neilgher Coffee and Plantation Co. (Limited).

— Conway & Wife v. Weston

York—Shaw v. Shaw

Postponed Motions.

Lond.—Antrobus v. Lee (Until Lee v. Jones, in Ex. Cham. is disposed of)

— Mallet v. Bateman (Until appeal in this case is disposed of).

DEMURRER PAPER.

SPECIAL ARGUMENTS.

Wednesday, Nov. 9.

Lyne v. Wyatt (D., to stand over till cases in Exchequer Chamber are disposed of)

Hobbs v. Henning (D.)

Eddison & ora. v. Brookes (By order)

Wilson & ora. v. Churchwardens of Sunderland-next-the-Sea (Ap.)

Taylor v. Humphries (Ap.)

Shipton v. Humphries (Ap.)
Vestry of Chelsea v. King (Ap.)

Mediterranean Hotel Co. v. Part (Ap.)

Mills v. Mayor of Colchester (D.)

Monday, Nov. 14.

Harrison v. Blackburn (Case at Nisi Prius)

Fray v. Fray (D.)

Metcalfe v. Westaway (D.)

Wednesday, Nov. 16.

Monday Nov. 21.

ENLARGED RULES.

First Day.

In re Sparham

Sürman & an. v. Gelpecke &

ora. (Goschen & ora., garnishees) (Till case in Exchequer is disposed of).

CUR. ADV. VULT.

Helps & an. v. Clayton.

MICHAELMAS TERM.—On Tuesday, on the opening of the common-law offices, at the termination of the Long Vacation, the lists of arrears for the forthcoming Michaelmas Term, commencing on the 2nd proximo, were exhibited. In the three courts the arrears only number 83, consisting of 48 in the Queen's Bench, 20 in the Common Pleas, and 15 in the Exchequer. Formerly the new trial paper in each court presented a formidable appearance, and some 12 or 18 months elapsed before an application for a new trial was disposed of, either in argument or decision. On the present occasion, however, there are only 18 rules in the three courts pending for new trials. It appears that in the Queen's Bench there are 33 rules in the special paper, 7 enlarged rules, and 8 new trial rules. In the Common Pleas there are 2 enlarged rules, 7 for new trials, 2 postponed motions, 1 matter for decision, and 8 demurrers, already entered; while in the Exchequer there are 5 errors and appeals, 3 rules in the peremptory paper, 4 in the special paper, and 3 in the new trial list, one of which stands for judgment. The lists will probably be greatly increased before the end of the Term, by applications for new trials arising out of the summer circuits. There are

several registration appeals to be heard next Term in the Court of Common Pleas. There are 124 new candidates to be admitted as attorneys, and about 20 readmissions. Last year the revenue from attorneys amounted to 88,675*l*. The judges will breakfast with the Lord Chancellor, and afterwards proceed to Westminster Hall.

BISHOP COLENZO'S CASE.—The appeal of the Bishop of Natal against the sentence of Dr. Gray, Bishop of Cape Town and Metropolitan of South Africa, deposing him from his bishopric, will come before the Judicial Committee of the Privy Council immediately after the forthcoming Michaelmas Term. The case is at present somewhat complicated. The first step in the matter of the petition to the Judicial Committee was taken on Monday, the 27th June, when Mr. W. M. James, Q. C., appeared on behalf of Bishop Colenso, but further proceedings were adjourned. Bishop Colenso prays that her Majesty would be pleased to declare the petitioner to be entitled to hold his see until the letters-patent granted to him should be cancelled by due process of law for some sufficient cause of forfeiture, and to declare that the letters-patent granted to the Bishop of Cape Town, in so far as they purported to create a court of criminal justice within the colony, and to give to the Archbishop of Canterbury an appellate jurisdiction, had been unduly obtained from her Majesty, and did not affect the petitioner's rights. Bishop Colenso also prays that "the pretended trial and sentence" were void and of no effect, and that an inhibition, as was usual in ecclesiastical cases, should issue under the proceedings under the sentence, pending the appeal. Their Lordships have not at present granted the inhibition, since to grant it would be to assume the jurisdiction claimed by the Bishop of Cape Town.

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THE JURIST.

LONDON, NOVEMBER 5, 1864.

THE subject of the liability of a master for an injury done to his servant by the negligence of a fellow-servant is one which has been of late years repeatedly discussed before the Courts, and may now be considered to have been thoroughly sifted and ascertained; and the degrees by which the rule of law, as now settled, has grown up and been developed, is a matter of some interest to the lawyer, and of no small importance to those who have many persons in their employ, especially to railway companies. The first case on the point is that of *Priestley v. Fowler* (3 M. & W. 1), where the plaintiff was sent by the defendant, his master, to take certain goods in a van, which was under the care and conduct of a fellow-servant. This fellow-servant overloaded the van, which, in consequence of the overloading, broke down and injured the plaintiff. It was admitted, on the argument, that there was no precedent for the action, and therefore that the right to maintain it must depend upon general principles. The Court held that the master was not liable, and on the following grounds:—"If the master be liable to the servant in this action, the principle of that liability will be found to carry us to an alarming extent. He who is responsible by his general duty, or by the terms of his contract, for all the consequences of negligence in a matter in which he is the principal, is responsible for the negligence of all his inferior agents. If the owner of the carriage is therefore responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his coachmaker, or harness-maker, or coachman. Nor is there any reason why the principle should not, if applicable to this class of cases, extend to many others. The master, for example, would be liable to his servant for the negligence of the chambermaid in putting him into a damp bed; for the negligence of the cook in not properly cleaning the copper vessels used in the kitchen. The inconvenience, not to say the absurdity, of these consequences affords a sufficient argument against the application of the principle to the present case. In truth, the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he can be reasonably expected to do of himself. He is, no doubt, bound to provide for the safety of his servant in the course of his employment, to the best of his judgment, information, and belief."

In *Priestley v. Fowler* the two servants were engaged in once act of service, so that the question of what is a common employment, which has been so much discussed in later cases, did not there arise. But it is suggested by Lord Abinger in his judgment, and is now fully settled, that the master is bound, at all events, to take care to engage servants who are competent to perform the duties for which he engages them; and that if he does not take such care, he is liable to a servant for injury caused by the negligence of an incompetent fellow-servant. Thus, in the judgment of the Court in the case of *Hutchinson v. The*

York, Newcastle, and Berwick Railway Company (19 L. J., Ex., 207), it is stated, "Though we have said that a master is not responsible generally to one servant for any injury caused to him by a negligence of a fellow-servant while acting in one common service, yet this must be taken with the qualification, that the master shall have taken care not to expose his servants to any unreasonable risks. The servant, while he engages to run the risks of his service, including those arising from the negligence of fellow-servants, has a right to understand that the master has taken reasonable care to protect him from risk, by associating him only with persons of ordinary skill and care."

These two cases, therefore, decide, that if the master take due care to employ competent servants, he is not liable for injury done to one by the negligence of another, while they are engaged in a common act of service; and the ground of his non-liability is stated to be, that the servant, when he enters into the service, engages to run the risks consequent upon the nature of the employment which he undertakes; in fact, as is stated in the judgment of the Court of Queen's Bench in the recent case of *Morgan v. The Vale of Neath Railway Company* (33 L. J., Q. B., 264), "A servant who engages for the performance of service for compensation, does, as an implied part of the contract, take upon himself, as between himself and his master, the natural risks and perils incident to such service, the presumption of law being, that the compensation was adjusted accordingly; or, in other words, that those risks are considered in his wages."

It will be observed, that in the judgment in *Hutchinson v. The York, Newcastle, and Berwick Railway Company*, it is laid down that the master is not liable where the two servants are at the time of the accident "acting in one common service." These words, or the equivalent words "common employment," have given rise to much doubt and difference of opinion in several recent cases, especially in cases where railway companies were the defendants. The duties which the servants of these companies have to perform are so various and different in their nature, although concurrently performed, that it has been no easy matter to decide what is a common employment. Perhaps one of the best definitions of it, so far as railway companies are concerned, is given by Chief Justice Shaw in his judgment in the American case of *Fardal v. The Boston and Worcester Railroad Corporation* (4 Metc. 49). In this case the engineer who managed the engines and cars was held not entitled to recover against the company for the negligence of their switchman in negligently leaving a switch across the railway, whereby the engine and cars were thrown off the line. The Chief Justice remarks—"This is an action of a new impression in our Courts, and involves a principle of great importance, and presents a case where two persons are in the service and employment of one company, whose business it is to construct and maintain a railroad, and employ them upon trains of cars to carry persons and merchandise for hire. They are appointed and employed by the same company to perform separate duties and services, all tending to the accomplishment of one and the same service—that of the safe and rapid transmission of the trains; and they are paid for their respective services according to the nature of their respective duties, and the labour and skill required for their proper performance." The question is, whether, for damage sustained by one of the persons employed by means of the carelessness and negligence of another, the party injured has a remedy against the common employer." After discussing the question with great ability, the Chief Justice held that the company were not liable.

This judgment was cited with great approval, and acted upon by the Court of Exchequer in the recent case of *Waller v. The South-eastern Railway Company* (32 L. J., Ex., 205; 9 Jur., N. S., part 1, p. 501). In this case a guard was travelling with a train in the course of his duty, and by reason of the defective state of the permanent way the train ran off the line and he was killed. It was the duty of the "guager" of the plate-layers to keep the line in proper repair, and he was a person of competent skill. The accident happened through his neglect, and the Court held the company not liable. The nature of the respective duties of the guard and the guager was essentially different, "but the immediate object was the successful conducting of the passengers of that particular train, one servant having to take care that the train was properly conducted, and another servant having to take care that the rails were in a fit condition, so that the journey might be properly performed." Thus, the widest possible meaning is judicially put upon the term "common employment;" so that if a master takes due care to employ servants competent to their duties, he cannot be liable for any damage done to one of them by the negligence of another in the performance of such duties, however dissimilar their respective occupations may be. The decisions which we have cited are entirely confirmed by the Court of Common Pleas in two very recent cases.—*Lovegrove v. The London and Brighton Railway Company* and *Gallagher v. Piper* (10 Jur., N. S., part 1, p. 879). In the latter case Byles, J., differed from the rest of the Court, on the ground, that in his opinion the master, through his foreman, knowingly put the plaintiff to work on an unsafe scaffold, and, therefore, that the case was within that class of cases in which it has been held that the master is bound to provide sufficient tackle and machinery as well as competent fellow-servants. It is the master's duty to be careful that his servant is not induced to work under a notion that tackle or machinery is staunch and secure, when, in fact, the master knows, or ought to know, that it is not so. His Lordship rests his judgment on the ground that the facts shewed "a personal" nonfeasance on the part of the employers; and in such cases it would seem that the neglect of the employers must be "personal;" otherwise there would be a frequent conflict between the principle which we have just mentioned, and that which is so clearly established by the cases, as to the meaning of the term "common employment."

Reviews.

Law Reporting. A Letter to Sir Roundell Palmer, Knt., M.P., her Majesty's Attorney-General, having particular Reference to the Scheme of Law Reporting recommended by the Committee appointed at the Meeting of the Bar held December 2, 1863. By W. T. S. DANIEL, Q.C. With an Appendix, containing Copies of the Report and Scheme, and other Documents. 8vo., pp. 77. [Longmans. 1864.]

MR. DANIEL, to whom, though we do not approve of the scheme which he advocates, we think the Profession is greatly indebted for the perseverance, zeal, and ability with which he has striven for an amendment of the law reports, has addressed a letter to the Attorney-General, in anticipation of the adjourned meeting of the Bar, which, according to the resolution passed in Lincoln's Inn Hall on the 1st July last, ought to be held on some day in the present month to be fixed by the Attorney-General. We can at present find room only for some extracts from Mr. Daniel's letter, which we give without comment:—

"In the Appendix C. will be found a copy of short-hand notes of the proceedings of this meeting. A perusal of these will remind you of what transpired at the meeting, and what led to its adjournment; and it was to me matter of surprise that any publications, affecting to furnish correct information to the public, should have fallen into the mistake of representing, much less of repeating with zealous perseverance, that the proceedings of the committee had proved a fiasco, and that the profession would be troubled no more with the report or scheme. Notwithstanding this weak invention of the enemy, I presume, sir, the meeting will be held; and that the question of adopting the plan as recommended, with or without modification, or rejecting it in toto, will be considered and decided; and I cannot bring myself to doubt for a moment but that the proceedings of the meeting will be conducted and concluded in a manner becoming the importance of the subject and the character of the Bar.

"My object in writing the present letter, and submitting the following observations for the consideration of my professional brethren, is, to promote and assist the full and fair discussion of the scheme recommended by the committee; being satisfied that, whatever may be the decision of the meeting thus shortly to be held, the time and labour that have been bestowed upon the matter will not have been thrown away, but that a positive good will be achieved by a knowledge of the fact, that the Bar as a body are willing, or decline, to co-operate in the redress of the existing evils, and to exert for that object such influence and authority as they, as an institution, possess." (P. 3).

"The objections which weigh with me to an official system are of a practical nature, and I will confine them to patronage and finance:—

"1. As to patronage. As an official system, accompanied by compensation to existing interests, would supersede and become the substitute for all the existing sets of reports, it would have to supply the place of what Lord St. Leonards, in his communication to the committee (and which has been recently published), calls the earlier and the later report, as to which his Lordship adds—what I believe will be very generally, if not universally, admitted—that the profession would not now be willing to lose either. The same view of what the present requirements of the profession are, was taken by the *Law Times* in the number of the 10th October, 1863. In a leading article, after adverting to the absurdity of half-a-dozen pens and as many presses being engaged at the same time in noting and printing the same cases, the editor sensibly observes, that 'one carefully prepared, and therefore slowly produced, authorised report, and one speedy report, the latter to be citable only until the case should be reported in the regular report, is all that the profession wants.' This earlier and later report must, therefore, I conceive, be provided for under any system that professes entirely to supersede the present. The patronage must extend to the appointment of a number sufficient to ensure the efficient and punctual preparation and publication of the double set. At present there are about 130 members of the bar engaged in reporting. Perhaps half the number would suffice under an official system. What would be the aggregate amount of salaries to be paid? Would the salary be fixed with reference to the intrinsic value of the labour and skill employed, and a chief reporter be paid after the rate of a chief registrar? or would the salary be regulated by the average rate of the salaries or profits now received by reporters?—a serious question for probable candidates. Upon either computation the annual amount would be

considerable. The proposal is, that all this patronage should be vested in the holder of the Great Seal. In whom else could it be vested? And is this patronage to be exercised by the Lord Chancellor independently of, and without the concurrence of, the presiding judges of the respective courts? and are the appointments to be for life or during good behaviour, or during pleasure, or for a specified term, with or without eligibility to reappointment? What effect, I would ask, would such appointments have upon the independence of the Bar? Would not such a system have a strong and direct tendency to induce subservience to the powers that be, and impair all proper habits of self-reliance? One of the advantages of the present system is, that that the reporters are among us and of us. The instincts, habits, and feelings of the barrister are not changed or weakened by becoming a reporter. Under an official system this would necessarily be otherwise. The sympathies of a reporter with his non-reporting brethren would be loosened, if not destroyed; his *esprit de corps* would be no longer the same; he would become a gentlemanly official, isolated, independent—among us still, but no longer of us. In proportion as the independence of the Bar is to be valued for the sake of itself and the public, so is the prejudicial effect of a system of official appointments greatly to be feared. But apart from considerations affecting the Bar, I doubt much whether jealousy on the part of Parliament and the public would not present an insurmountable obstacle. Lord Brougham has recently borne his testimony to the fact, that jealousy of patronage has been a great obstacle in the way of the appointment of public prosecutors. (See report of a meeting of the Jurisprudence Department of the Social Science at York, on the 27th September, in the *Jurist* of the 8th of the present month of October). And would not the ground of jealousy of Government influence be at least as great in the case of official reporters? (P. 19).

After some further arguments against an official system, and some remarks in favour of the scheme recommended by the committee, Mr. Daniel thus assails his "authorised" opponents, who, however, are by no means so formidable or so implacable as the irregulars (p. 29):—

"But though the principle may be good and the object desirable, there is a wide and difficult interval between merit and success. The batteries of self-interest command the passage, and at this time are well manned. How often have I been told the scheme cannot succeed—the opposition of vested interests will prove too strong. Adverting to the proceedings at the meeting of the 1st July last, it is said, 'See, even the authorised reporters, whom the scheme proposes to propitiate, are opposed to it. Mr. W. M. Best, the senior reporter in the Queen's Bench, will be supposed by the public to represent the views of the authorised reporters at the common-law bar; Mr. A. E. Miller, the coadjutor of Mr. Heming, will, in like manner, be supposed to represent the views of the authorised reporters in the Court of Chancery.' I venture to doubt the accuracy of these views. I have no reason to think that Mr. Best represents the views of the common-law reporters, and I have reason to think that Mr. Miller does not represent the views of some, at least, of the Chancery reporters. But if it is to be assumed, that, to any important extent, the authorised reporters would oppose the change proposed, it will be well to see how they now stand toward the profession, viewing them as having undertaken the discharge of a public duty.

"Mr. Best moved, and Mr. Miller seconded, an amendment, proposing to strike out of the scheme all

that related to the appointment of editors. Now, it will be observed that the authorised reports are the only set which have no editors; the *Law Journal*, the *Jurist*, the *Law Times*, the *Weekly Reporter*, and the *New Reports* have each their editors. Practically, therefore, there is no difficulty in obtaining the services of a number of able and accomplished barristers, willing to act under the control and supervision of editors; and whatever objection may be taken to the multiplicity and multifariousness of the unauthorised reports, and the quantity and quality of the matter reported, none can be taken to their cost, none to the expedition or regularity of their publication.

"Under a system of editorship, therefore, in all the existing sets of reports, other than the authorised, the profession and public, although burdened with the evils so graphically described by the contributor to the *Saturday Review* (ante, p. 12), have at least the solid advantage of expedition and regularity in publication, combined with moderate cost. I believe the whole five sets would not cost more than 15*l.* a year, while a complete set of the authorised reports could not be had much, if at all, under 30*l.* Now how stands the case of the authorised reports in these matters of expedition, and regularity of publication and cost? Mr. Best, in his address to the meeting, says, in effect, we don't want editors, because I and my colleague supervise each other's labours, so that each acts as editor to the reports of the other; and we are the descendants of a long and illustrious line of reporters, who have always pursued the same system. But this system of voluntary editorship does not help towards either expedition or regularity of publication. I take the last number now lying before me of Best & Smith's Queen's Bench Reports, published 14th September, 1864, part 2, vol. 4, of cases argued and determined in Trinity Vacation and Michaelmas Term, 1863. The reports of the cases argued and determined in the present year, 1864, are yet to come; for these the profession must, for an unknown period, depend upon the *Law Journal* or one or other of the weekly publications—so much for expedition. The same number also states, 'that these reports are in continuation of those by Ellis & Blackburn, Ellis, Blackburn, & Ellis, and Ellis & Ellis. The remaining portions of the latter are in preparation, and will be completed with as little delay as possible.' I now turn to the last number of Ellis & Ellis, thus referred to, and I find the part contains the reports of cases argued and determined in Hilary Term and Vacation, and Easter Term, 1860; and, though the date of publication is not given on the face of the part, it was published, as is well known, during the present year 1864; and, as Best & Smith's Reports commence in Easter Term, 1861, the authorised reports of decisions in the Queen's Bench, from Easter Term, 1860, to Easter Term, 1861, are yet unpublished. To the last number of Ellis & Ellis is affixed the following notice:—'In the composition of Ellis & Ellis's Reports, Mr. Francis Ellis continues to have the valuable assistance of Fredk. K. H. Cook, Esq., of the Inner Temple, barrister-at-law.' So that the reports of Ellis & Ellis, when completed, will not be the reports of the very learned reporters whose names they bear. The lamented death of Mr. Ellis, leaving two years of reports in arrear, it will be said is the unfortunate cause of this interruption in the regular publication of the series. Granted: but are not such interruptions frequent in the series of authorised reports? and are they not the almost inevitable consequence of the system upon which the authorised reports are conducted? and, to the extent to which authorised reports are of any value, are they not injurious to the profession and to the law? Such irregularities and interrup-

tions, it is well known, are not confined to the Queen's Bench Reports; the system produces its evil fruits in the Court of Chancery. The fifth volume of Russell's Reports never has been, and I suppose now never will be, completed. We have only during this summer of 1864 had the eighth volume of De Gex, Macnaghten, & Gordon's Reports completed, bringing the reports of decisions in the Court of Appeal in Chancery down to 1857; and the third volume of De Gex, Fisher, & Jones, which ought to contain the decisions in the Court of Appeal in Chancery from the end of 1861 to Michaelmas Term, 1862, is yet incomplete; part 2, vol. 3, of these reports (bringing the decisions down to December, 1861) was published the 5th May, 1863; and the first number of the existing series of De Gex, Jones, & Smith, published November, 1863, contains this notice:—"The lamented death of Mr. Fisher, and the time required for arranging and editing his notes of the cases reported by him, have prevented the immediate completion of the series of De Gex, Fisher, & Jones's Reports." From this note it would seem that the authorised reporters in Chancery have something of the same notion of editing their colleague's labours as Mr. Best.

"These matters are not brought forward from any desire to make invidious charges against anybody. They are exhibited as the natural fruits of the system upon which the authorised reports are at present conducted, and appear to me to have a very close and direct bearing upon the amendment of Mr. Best and Mr. Miller. Exclusive of the *Nisi Prius* Reports, there are, as stated in my former letter, sixteen different sets of authorised reports, and each of these sixteen sets is prepared and published according to the convenience, views, and interests of the sixteen different sets of gentlemen whose names they bear, and their respective publishers. There is no community of design, arrangement, management, or interest among them."

Court Papers.

EQUITY CAUSE LISTS, MICHAELMAS TERM, 1864.

. The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—*A.* Abated—*Adj.* Adjourned—*A. T.* After Term—*Ap.* Appeal—*C. D.* Cause Day—*Cl.* Claim—*C.* Costs—*D.* Demurrer—*E.* Exceptions—*F. C.* Further Consideration—*F. D.* Further Directions—*M.* Motion—*M. D.* Motion for Decree—*P. C.* Pro Confesso—*Pl.* Plea—*Ptn.* Petition—*R.* Rehearing—*Sp. C.* Special Case—*S. O.* Stand Over—*Sh.* Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.

Foxen v. Foxen (W., June 28) L. C.
Blasson v. Blasson K., June 28) L. C.
Rede v. Oakes (R., July 2)
Mayor, &c. of London, Governors of St. Thomas's Hospital v. Mayor, &c. of London & an. (W., July 4) L. C.
Tiffin v. Parker (K., July 7) L. C.
Keats v. Hewer (S., July 9)
Shaw v. Bunny (R., July 11)
Countess of Harrington v. Atherton (R., July 11)
In re Mackinlay } (R.,
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Beynon v. Morris (S., July 27)

Collingwood v. Russell (S., July 20)
Mackintosh v. Steuart (R., Aug. 2)
Sichel v. Raphael (W., Aug. 4) L. C.
Cooke v. Cooke (W., Aug. 8) L. C.
Rogers v. Dock Co. of Kingston-upon-Hull (W., Aug. 10)
Wilson v. West Hartlepool Harbour and Railway Co. and Jackson (R., Aug. 18)
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CAUSES.

Baxendale v. West Midland Railway Co. (M D) L. C.
Baxendale v. Great Western Railway Co. (M D) L. C.

Before the Right Hon. the MASTER OF THE ROLLS. CAUSES, &c.

Hole v. Hole (D)
India Freehold Land Colonisation Trust and Agency Association (Limited) v. Lascelles (D)
Maythorn v. Palmer (M D)
Labalmondiere v. Reidy (M D)
Ransom v. Ransom (M D)
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Banks v. Cartwright (M D)
Borras v. Hodge (M D)
Cuddon v. Bowles (M D)
Thompson v. Hudson (M D)
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Clark v. Eversfield (M D)
Ormerod v. Rostrom (M D)
Bruce v. Morison (Cause)
Braithwaite v. Kearns (M D)
Reeves v. Matthews (M D)
Gamble v. St. Helens Canal and Railway Co. (M D)
Baker v. Pritchard (M D)
Paul v. Pole (Cause, Witnesses)
Pilling v. Pilling (M D)
Luff v. Lord (M D)
Howard v. Earl of Shrewsbury (Cause)
Turner v. Turner (F C)
Harvey v. Trenchard (M D)
Chadwick v. Turner (M D)
Preston v. Bradney (M D)
Sturgis v. Bolden (M D)
Henry v. Hewitt (M D)
Say v. Parnell (M D)
Morgan v. Davies (M D)
Waterman v. Smith (Cause)
Turney v. Bayley (M D)
Robson v. Flight (M D)
Nason v. Clamp (Cause, Witnesses)
Williams v. Maddox (M D)
Linford v. Provincial Horse and Cattle Insurance Co. (M D)
Pritchard v. Roberts (M D)
Spiller v. Maude (M D)
Lawrence v. West India Relief Commissioners (M D)
Lloyd v. Banks (M D)
Emmet v. Tottenham (M D)
Moss v. Chapple (M D)
Priestly v. Ashworth (M D)
Millard v. Harvey (M D)
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Turrell v. Hocking (M D)
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Hands v. Hands (M D)
Vanden Broek v. Peto (M D)
Earl of Durham v. Legard (M D)
Tottenham v. Emmett (M D)
Jones v. May (M D)
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Plucknett v. Pomfret (M D)
Roose v. Poole (M D)
Anderton v. Anderton (M D)
Rockett v. Robinson (M D)
Ashworth v. Priestly (M D)
Froom v. Learmonth (M D)
Rickatson v. Gibson (M D)
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King v. Morison (Cause)
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Elgood v. Campbell (M D)
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Williamson v. Barrow } Ch.)
Harrison v. Rhodes (F C)
Snelling v. Hoppe (F C)
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Burgin v. Brown (M D)
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Caton v. Kinchant (Cause)
De Beauvoir, Bart., v. Benyon (Cause)
Killick v. Swail (M D)
Symonds v. Wilkes (F C, Summons to vary)
Hobson v. Jones (Cause)
White v. Welch (M D)
Caldclough v. Beckett (M D)

Pullan v. Pullan (F C)
Dorsett v. Adams (M D)
Halliwell v. Halliwell (F C)
Quicke v. Floud (M D)
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Jones v. Lambert (M D)
Sill v. Boden (Cause)
Davis v. Davis (M D)

Godfray v. Brooke (M D)
Turner v. Mirfield (M D)
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Rowe v. De Lavigerie (Cau.)
Dixon v. Dickinson (M D)
Guest v. Smythe (Cause)
Armstrong v. Walton (M D)
Mathers v. Green (Cause).

Burris v. Jenkins (Cause)
M'Intosh v. Great Western
Railway Co. (F C)
Defries v. Smith (F C, and
Summons)
Walford v. Gray (Cause)
Clark v. Levens (M D)
Johnson v. Plowden (M D)
Bacon v. Clarke (M D)
Bayley v. Williams (Cause)
Tillyard v. Franco (M D)
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LECTURES 1884-85.—THREE COURSES OF LECTURES will be delivered in the Hall of the Society on MONDAY and FRIDAY EVENINGS, in the Months of November, December, January, February, and March next, at Eight o'clock precisely.

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1. Subjects of Demise.
2. Lessors and Lessees: their Rights and Liabilities.
3. Leases under Powers.
4. The Instrument of Demise: usual Covenants and Conditions, &c.
5. Assignment of Leaseholds.

IV.—V. Mortgages—

1. Nature of Estate of Mortgagor and Mortgagee.
2. Usual Forms of Legal Mortgages of Real Estate.
3. Equitable Mortgages by Deposit.
4. Mortgages of Personal Estate, including Choses in Action.
5. Mortgages under Powers, including Mortgages by Devises in Trust and Executors (see 22 & 23 Vict. c. 35, sects. 14-18).

VI. The Mortmain Act (9 Geo. 2, c. 36), and in particular of the Mode sometimes adopted for avoiding its Provisions by means of Secret Trusts. Reference will be made to the case of *Sweeting v. Sweeting* (33 L. J., Ch., 211).

VII. The various kinds of Statutory Conveyances—the Requisites and the Construction of Deeds generally.

VIII.—X. Marriage Settlements—

1. Ordinary Settlement of Personality.
2. Ordinary Settlement of Realty.
3. Settlements by Infants and other Persons of restricted Capacity (18 & 19 Vict. c. 45).
4. Wife's Equity of Settlement.
5. The Doctrine of Separate Use.
6. Portions—and the Doctrines of Ademption and Satisfaction.

XI. Companies' and Partnership Deeds.

XII. Creditors' Trust Deeds—Composition and Inspectorship Deeds. (Bankruptcy Act, 1861, sect. 192).

EQUITY LECTURES, by MONTAGUE HUGHES COOKSON, Esq., Barrister at Law.

This Course will consist of Twelve Lectures on the STATUTORY JURISDICTION of the COURT of CHANCERY, to be delivered as nearly as possible in the following order:—

1. The Nature, Extent, and Limits of the Statutory Jurisdiction.
2. The Trustee Relief and Trustee Further Relief Acts (10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74).
- 3-4. The Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18).
5. The Leases and Sales of Settled Estates Act, and Amendment and Further Amendment Acts (19 & 20 Vict. c. 120, 21 & 22 Vict. c. 77, and 27 & 28 Vict. c. 45).
6. The Trustee Act, 1850, and Trustee Extension Act, 1852 (13 & 14 Vict. c. 60, and 15 & 16 Vict. c. 55).
7. Sir George Turner's Act, and the Real Property Amendment and Further Amendment Acts (13 & 14 Vict. c. 35, 22 & 23 Vict. c. 35, s. 30, and 23 & 24 Vict. c. 38, s. 9).
- 8-9. The Infants Custody and Infants Settlement Acts (2 & 3 Vict. c. 54, and 18 & 19 Vict. c. 43).
10. The Chancery Amendment Act, 1858, and the Chancery Regulation Act, 1862 (21 & 22 Vict. c. 27, and 25 & 26 Vict. c. 42).
- 11-12. The Companies Act, 1862 (25 & 26 Vict. c. 89).

N.B.—In addition to the Cases which will be cited from the Reports, the General Orders and Regulations of the Court will be referred to, and commented on, in connexion with the several Acts of Parliament.

COMMON LAW and MERCANTILE LAW LECTURES, by HUGH SHIELD, Esq., Barrister at Law.

I.—III. The Laws administered in the Common-law Courts with respect to Associations formed for Purposes of Gain.—Mercantile Partnerships.—Joint-stock Companies.—Corporations.

The Leading Distinctions between these three Forms of Association.—Sketch of the History of Legislation as to Joint-stock Companies.

Mercantile Partnerships—

- What Agreements constitute Actual Partnerships.
- Partnerships as regards third Persons.
- The Liabilities of Partnerships for the Acts of a Partner.
- Actions by and against Partnerships.
- The Relations of Partners inter se.—Deeds of Arrangement under the Bankruptcy Laws.

IV.—VI. Joint-stock Companies—

The Companies Act, 1862.
The Companies Clauses Consolidation Act, 1845.
The Liability of Promoters and Directors of Companies for Misrepresentations in Prospectuses and Reports.
Railway Shares and Debentures.—Actions for Calls.—Lloyd's Bonds.
Contracts with Corporations.

N.B.—In this branch the Lecturer will not attempt to exhibit a complete View of Company Law, the object being rather to illustrate the General Principles of the Common Law by reference to Companies.

VII. The Assessment of Compensation for Lands taken or injuriously affected under the Lands Clauses Act, 1845.

VIII. The Law of Carriers, with special reference to Railway Companies as Carriers.

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THE JURIST.

LONDON, NOVEMBER 12, 1864.

THE three Stamp Acts which have been passed during the last session of Parliament (27 & 28 Vict. c. 18, 56, and 90), cannot be regarded as a very serious addition to the complexity of the stamp laws. But that complexity, the inconvenient and oppressive operation of the stamp laws, the uncertainty of their interpretation, and the rapacity and incompetence of the officers appointed to administer them, constitute a grievance, which we trust will not be endured much longer. A case reported in the last number of the *Weekly Reporter* may be referred to, in illustration of the absurdity of these laws. The general Stamp Act (55 Geo. 3, c. 180) imposed an ad valorem stamp duty on conveyances of property where the consideration for the conveyance was money, but left conveyances in consideration of stock untaxed. By the 13 & 14 Vict. c. 97, conveyances in consideration "of any stock in any of the public funds, or any Government debenture, or stock of the Bank of England or Bank of Ireland, or any debenture or stock of any corporation, company, society, or persons or person, payable only at the will of the debtor," were subjected to an ad valorem duty on the market value of the stock or debenture constituting the consideration; and it was directed, "that the purchase money or consideration should be truly expressed and set forth in words at length, in or upon the principal or only deed or instrument of conveyance; and when such consideration shall consist either wholly or in part of any stock or security, the value thereof respectively to be ascertained as herein mentioned shall also be truly expressed and set forth in manner aforesaid in or upon every such deed or instrument, and such value shall be deemed and taken to be the purchase or consideration money, or part of the purchase or consideration money, as the case may be, in respect whereof the ad valorem duty shall be charged as aforesaid." In *The Furness Railway Company v. The Commissioners of Inland Revenue* (13 Weekly Rep. 10), the question arose upon a conveyance by the Ulverstone Railway Company of their works and undertaking to the Furness Railway Company, in consideration of 298,000*l.* preferential 6*l.* per cent. stock of the latter company, to be allotted to the shareholders of the Ulverstone Company, as fully paid-up stock, with a perpetual preferential dividend of 6*l.* per cent. per annum. From this statement it would appear that the 6*l.* per cent. to be paid upon the preferential stock was a dividend to be made to that amount out of profits, if any accrued, and that it did not constitute in any sense a debt from the Furness Company, to be paid out of their general assets. The shareholders in the Ulverstone Company were admitted as partners in the Furness Company, with a preference, within certain limits, in the division of profits. If the arrangement was different from this, the difference does not appear to have been considered material, and it was not in any way adverted to. The deed stated the

amount of stock, but did not set forth the market value of it. It was held by the Court of Exchequer, that it required an ad valorem conveyance stamp on the market value of the stock. Pollock, C. B., in giving judgment, said, "We think it is clear that part of the consideration for the sale was stock. It was argued that it was not stock within the meaning of the second passage in the schedule, tit. 'Conveyance,' because stock of some third company was meant by that. We think there are no grounds for so contending. If the Furness Company had occasion to buy land, and promised to pay the price by bills, we think such an agreement would be within the statute." The omission to state the market value was considered unimportant.

We do not understand the objection to which the Chief Baron refers, that the stock could not be within the act, because it was stock of the purchasers themselves, and not of some third person. We take it to be clear, that if a conveyance is made to the Bank of England, in consideration of Bank stock, the ad valorem duty attaches. But the real question in the case—whether the stock was that kind of stock which the act mentions, does not appear to have been suggested. The act makes no mention of shares, and if instead of paid-up stock the consideration had been paid-up shares in the Furness Railway Company, it is not easy to see how the deed could have been brought within the charge. The clause in question mentions only stock and debentures:—"Stock in any of the public funds," "Government debentures," "Stock in the Bank of England or Bank of Ireland," "Debentures or stock of any corporation, company, society, or persons or person payable only at the will of the debtor." Within some one of these denominations the consideration, if not actually money or an ordinary debt, must be brought. Now, stock in the funds is a debt bearing interest, the principal payable only at the will of the debtor. Debentures are securities for debts, and, if not payable only at the will of the debtor, come within the description of a money consideration. Stock of the Bank of England or Bank of Ireland is a portion of the capital of an incorporated partnership, giving a title to a dividend of profits. But stock of any corporation, persons, or person, &c., payable only at the will of the debtor, is something involving a debt—something analogous to stock in the public funds—a debt bearing interest until it is paid off, and not to be paid off until the debtor thinks fit. For capital in a partnership there is no debtor, nor any person having an option to make or withhold payment; and if it was the intention to include such capital, the words "share or capital stock" would have been used, and the words on which we have commented would have been omitted. That the framer of the act, unskilful as he was, knew how to describe partnership stock, is shewn by the language of the title "settlement" in the same schedule, which imposes an ad valorem duty on a settlement of "any definite and certain share or shares in any of the Government or Parliamentary stocks or funds, or in the stocks and funds of the Governor and Company of the Bank of England or of the Bank of Ireland, or of any other company or corporation." We submit,

therefore, that until the question has been fairly raised and decided, a conveyance in consideration of shares or consolidated stock of a company (other than the Banks of England and Ireland) is not liable to ad valorem duty. But why should it not be? or rather why should such a conveyance, or any other conveyance, be subjected to any such impost? Why is an exchange of land for money to be charged, and an exchange of land for land or goods to be exempt? Why should a capitalist who brings half a million into a trading concern pay no more than 35s. on the deed which records his admission, while a mortgagee, creditor, say, of an insolvent colliery, on which he has advanced 50,000*l.*, and which is not worth 500*l.*, is unable to purchase the miserable equity of redemption without paying 250*l.* in stamps to the Government? No defence can be offered for these anomalies, or for the shameful obscurity and complexity of the statutes which have created them—only let us hope that if any attempt is made to consolidate and amend the Stamp Acts, the advice and assistance of the very incompetent men who have brought them into their present condition will be rejected.

Reviews.

Petheram on Interrogatories.—[Maxwell.]

THIS is a useful little book, on a subject which is constantly being discussed before the Courts or at the judge's chambers. Few practitioners will deny that the power of administering interrogatories created by the Common-law Procedure Act is constantly abused, and that orders allowing them are frequently made by the judges, simply because they have not time to examine them in detail. The result is, that the party interrogated must either answer the questions or incur the risk of unfavourable remark if he refuses to answer. This is an evil which is sometimes remedied by the judge referring the interrogatories to the Master, in order that he may reduce them at his discretion. And it may be that the evil will be further diminished when the rules by which the allowance of questions should be regulated are more clearly and generally understood. Mr. Petheram's book collects the principal cases on the subject, and extracts from them these general rules. He arrives at the conclusion, that the discovery which the Legislature intended to allow is analogous to the discovery allowed in equity. And he shews how the decision in *Bartlett v. Lewis* (31 L. J., C. P., 230) may be reconciled with this rule. *Prima facie*, this case appears to be at variance with the previous cases, in which the rule for that which Mr. Petheram contends has been laid down; and although his comments upon it may be correct, still we think that other minds might reasonably take a different view of the extent and meaning of this decision, and consider, that in consequence of it the limitation of the power of administering interrogatories is still undefined. This, however, is no fault of Mr. Petheram's book, in which the cases and judicial expressions of opinion upon this branch of the law are carefully collected.

Correspondence.

LAW REPORTING.

TO THE EDITOR OF "THE JURIST."

SIR,—Mr. Daniel, who may be fairly called the originator of the most recent movement in the direction of a reform in the present mode of reporting judicial decision, has, at the close of the vacation, and with such an amount of freshness and vigour of handling

as will astonish the majority of persons who may have thought the subject almost exhausted, addressed a further letter to the Attorney-General, in connexion with the scheme lately recommended by two-thirds of the committee on law reporting. Writing, as I do, to yourself, sir, an editor of a series which is termed "irregular," I might erroneously infer that any attack upon the regular reports would be likely to enlist your sympathy; and that any plan, however ill-considered, for replacing them by a new, untried, speculative series, would be hailed by yourself, and those in a similar position, as a plan which could only result to your profit; but, knowing you, as I do, sir, through your excellent weekly lucubrations, I deem you quite incapable of entertaining such an idea. I am happy, moreover, to see that Mr. Daniel himself is more careful in his expressions with reference to the regular reporters, than he was in his former letter, for which former expressions, however, I believe, he subsequently expressed his regret. Still, he calmly contemplates their non-adhesion to the scheme proposed, and writes (p. 35):—"The council might be able to get on without them; and, although it would be matter of regret that reports *calling themselves authorised* should still continue to be published, it is obvious that a small proportion of that professional support which would be necessary to launch the scheme would, if withdrawn from the authorised reports, cause their annihilation." This sentence, at all events, shews candour, and is addressed, I must say, not so much to the learned Attorney-General as to the regular reporters, and, in effect, says:—"Fall in with our scheme, or you will be hopelessly ruined." As to yourself, sir, the scheme allows you to get on as well as you can, until it compensate or dispossess you. At the outset of his letter (p. 2) Mr. Daniel deprecates the spirit of dogmatism or self-interest, and I think most persons will acquit him of being influenced by the latter, but, as to the former, any man who is the originator of a scheme, and who confesses (p. 4) to having chiefly named the members of the committee, may be open to the charge of, or, at all events, is likely to relapse into, a dogmatic spirit. He is naturally wounded, therefore, by some passage in one of the public prints (could it have been the *Times*), to the effect, that the proceedings of the committee had failed—an operation which he styles as "a weak invention of the enemy" (p. 3). He defends the number and character of the committee so constituted as fairly representing the Bar; and, perhaps, the only objection, of which I was not until now aware, is, that Mr. Daniel chiefly named them; certainly to his remarks (p. 5) with respect to their high position, singleness of purpose, and public spirit, there can be no exception. I do not think, however, that the word "poison" (p. 6) is fairly attributable, either directly or indirectly, to the remarks of the contributor to the *Saturday Review*, who feared that the scheme might degenerate into a mere speculation for the benefit of the lawyers, as I imagine that all the reports, as at present constituted, are speculations for the benefit of the lawyers. We are next informed (p. 6) that seventy-four communications were received from members of the profession; others also from four societies of attorneys and solicitors; that application was likewise made to publishers and proprietors of existing reports, who appear to have been naturally somewhat slow to reveal the peculiar mysteries of their existence. We are glad, however, to learn (p. 6) that "the committee were, nevertheless, in possession of sufficient data to enable them to discharge their duty." The result, as it appeared to the committee, of all these communications was, a division of the Bar into three classes:—First, those

who were satisfied with existing things; secondly, those who wanted the interference of the Legislature, on the principle of compensation to existing interests; thirdly, those who wanted the assistance of a council of the Bar. Then there were some of the first class who were disposed to be of the second, if compensation were certain; and some of the second who were in favour of a registered record, at once exclusive and conclusive (p. 7). Mr. Denman appears to have been "the forlorn hope" of the simply satisfied, as we are told (p. 8), "no other member of the committee expressed concurrence in those views." But Mr. Daniel is not content with having demolished his opponent in committee, he feels he must handle the party Mr. Denman represents; he therefore refers to their arguments founded on the principle of free trade, and on the alleged fact, that the present system was substituted for one of monopoly connected with undue judicial influence. According to Mr. Denman, everything of value *must* now be reported; the Court must listen to any report accredited by a barrister; and those who are in full practice can afford to pay for *all* the reports. But Mr. Daniel inquires (pp. 10 and 11) whether reporting be a proper subject for free trade, and urges, with considerable force, that the proceedings of courts of justice are not in the nature of raw material, and that, at all events, "the evils of the old monopoly are not redressed. The authorised reports still live on, still dilatory, irregular, and as costly as ever" (p. 12). We have next the testimony of the *Saturday Review* and Mr. G. W. Heming to the necessity of a reform; and a passage is extracted from the able address of Sir James Wilde at the last meeting of the Social Science Association at York, attributing the frequent inconsistencies of decision to the present confused agglomeration of precedent; and Mr. Hallam is referred to, who says, "We accumulate precedent upon precedent, till no understanding can acquire, nor any intellect digest, the mass of learning that grows upon the panting student." (2 Mid. Ages, 123). Mr. Daniel then states, that private interests are sure to predominate over all considerations of public benefit, and inquires, "Why is quantity, not quality, the test?" His answer to this and similar questions is, "the hope of profit" (pp. 15 and 16). Mr. Daniel, after alluding to the form of amendment by external authority proposed by Mr. Joshua Williams and others, says, "The choice of remedies will, I venture to think, be found to lie between a strictly official system, as proposed by Mr. Montague Smith, and a system based upon professional regulation and control, as recommended by the committee." His objections to an official system are prefaced by a statement, that the attempt in the reign of James I to revive the ancient office of reporter was a failure. He, however, admits that the times are somewhat altered, and most persons will, perhaps, be disposed to think it possible, that a plant of progress, which withered in the constitutional and political atmosphere of the age to which he refers, might nevertheless flourish under the more benign rule of our present Sovereign. Mr. Daniel then alludes to the American system, and Mr. Wallace's testimony, to the effect, that some suggestions for good may possibly be taken by England from that system—"not, however, many;" and then proceeds to state his own objections to the official system, viz. on the ground of *patronage* and *finance* (p. 19). But does it not seem incredible, sir, that any man should deem that patronage, exercised by a council of the Bar, would be more acceptable to the profession, or be likely to be more disinterestedly bestowed, than if exercised by the Crown. "The earlier and later report must be provided for," says Mr. Daniel, "under any system that professes *entirely* to

supersede the present." Mark this, and couple it with the provisions of the 7th and 8th sections of the scheme for the appearance of the reports monthly, and the institution, *if desirable*, of a weekly set of reports *in connexion with* the others; and will anybody doubt that Mr. Daniel's project is a half candid, half insinuating, scheme for thrusting out all the present reporters, regular and irregular? There is, however, a vulnerable part of Mr. Daniel's armour; the 11th section of the scheme provides for the appointment and *removal* of the reporters by the council, and for the appointment, at all events, being subject to the approval of the judge. What if the judge should not approve the choice of the council, or the council remove a reporter who satisfies the judge? What an undignified conflict might ensue between the Bench and the Bar! Mr. Daniel then admits that half the present number of reporters might suffice under an official system; and asks, "Would the salary be fixed with reference to the intrinsic value of the labour and skill employed?" (p. 20). I should answer that question most emphatically in the affirmative, and as to patronage, it would be, of course, vested in the Crown; and surely, it is idle to talk of the sympathies of reporters with their brethren being likely to be affected by holding such appointments; on the contrary, the reporter would be much more respected than if he continued, as at present, to be in everybody's way, and to be elbowed about by everybody. The judges, by their appointment, lose nothing of their sympathy with the Bar, and every word that Mr. Daniel writes about jealousy of Government influence, would apply, with much greater force, to the appointment of the judges themselves. Mr. Daniel, supposing these objections surmounted, asks (p. 22), with respect to compensation, "Ought the money of the public to be applied to such a purpose?" and quotes from Mr. Brickdale, who considers the present reporters and publishers have no legal or moral claim to compensation. I confess my idea to be, that the irregular reports ought to be compensated for suppression as citable authorities, and the regular reports transformed into official, to be, as King James I quaintly hath it, prepared "compendiously, yet truly and narratively" (p. 76). But Mr. Daniel answers his own question, for he states that, under a proper system, the reports would not only be self-supporting, but "leave an available surplus" (p. 24). I may remark here, that there are many barristers who are only such in name, and to whom the reports are of no manner of importance; it would be well, under any new system, to compel a general contribution for the purpose of relieving those who practise. Mr. Daniel is of opinion that these money matters had better be left to those directly interested, and dislikes a Government board or council in this connexion; and concludes by stating that the official scheme must split upon either of the two rocks, patronage or finance. The writer then considers (p. 26) the scheme signed by fifteen out of twenty-two members of the committee: it is a curious fact, that the number of dissentients exactly corresponds with the number of the quorum fixed at the meeting, for we read, "and that of these (the committee) seven be a quorum." Let us not, therefore, despise the number, especially as the names are somewhat imposing. But does or does not Mr. Daniel break down when he says (p. 27), "My view of the principle of the scheme is this—it recognises the privilege of reporting for citation, as authority, as a privilege of the Bar, vested in it *for the public benefit*." To speak plainly and unmistakably, Mr. Daniel's scheme does *not* recognise any such principle; for it reserves the so-called indefinite privilege of every individual member, to the prejudice of the whole body of the Bar and the public.

Mr. Daniel says, further, that there is no novelty in his design, and refers to the Council of Education, and the Council of the Law Institution. To which of these, may I ask, would he intrust the onerous duties of the reporter? In pp. 28 and 29 the reader will find the co-operative principle enunciated, the ridicule of which, in the absence of capital, by a contributor to the *Saturday Review*, appears to have left a sting in Mr. Daniel's breast (p. 35). In p. 29 it is represented that the scheme "does not propose to establish a monopoly *by authority*," and that "exclusive citation will be the result of *professional choice*;" but it is subsequently admitted (p. 29), that "the batteries of self-interest command the passage, and at this time are well manned." Why this should be so, unless there were something more in the scheme than appears at first sight, I am at a loss to understand. Mr. Daniel then considers Mr. Best's amendment to the resolution for adopting the scheme; and, I must confess, I cannot support the amendment, because I am not prepared to support the scheme at all. It would be a great mistake to carry the amendment—a still greater to carry the resolution. Mr. Daniel then gives instances of delay in the publishing of the regular reports, as the natural fruits of a system without editorship, and hence argues against Mr. Best's amendment; and idly threatens the regular reporters (p. 35), if they stand out, with the alternative of ruin. Finally, the writer expresses his surprise, that the parties now interested in the reports have not agreed upon one standard set, "as their interests might be prejudiced by an *entire* change of system;" and adds, "But why should not the folly of individuals help to the public good?" (p. 37).

This is extraordinary argument, as addressed, at least, to members of the Bar! It seems as if Mr. Daniel said, "I can shew even now, if I choose, how you can all save yourselves from the consequences of my scheme, or any other." Is it so? Is there still, then, a locus penitentiae for the reporters, regular and irregular? Can they, by timely concert, avert the storm which, summoned by the wand of the legal Prospero, now darkens the air?

I have but a few more words to add. In Appendix (F.) to Mr. Daniel's letter will be found the quaint old document authorising official reporters, addressed by King James I to Sir Francis Bacon and Sir Julius Cesar, which will certainly repay the trouble of perusal, and in which not even "the convenient place for the taking and writing of the same" is omitted to be provided for.

Your obedient servant,

Rolls-chambers, Chancery-lane,
Nov. 3, 1864.

G. L.

APPEALS IN CRIMINAL CASES.

TO THE EDITOR OF "THE JURIST."

SIR,—It seems probable that the Home Secretary will be pressed, on behalf of the convict now under sentence of death, with some proof, or attempt at proof, that his clothes, on the morning after the murder, shewed no traces of blood. If such evidence had been offered at the trial, the advisers of the Crown could easily have shewn that the absence of marks or traces of recent washing on woollen cloth affords no proof that it has not been recently stained with blood. It is familiar knowledge to every surgeon, and probably to many tailors, that blood dried upon even light-coloured woollen cloth, can be removed by brushing, without leaving any mark. But on an *parte* application such evidence would not be forthcoming.

As fifteen years have elapsed since I addressed to you some observations on a proposal, which you then regarded with favour, for allowing compensation from the State to persons wrongfully convicted, and as those observations are pertinent to the question of the expediency of new trials in criminal cases, I will now ask your permission to submit them to a new generation of readers. They ran as follows:—

"Though I cannot unreservedly agree with Lord Coke, that 'the common law is nothing but reason,' yet I think with him, that some of its most 'amiable and admirable secrets' are to be reached only by deep diving; and I fear you have rather hastily concluded, from an incomplete exploration of its depths, that our old constitutional maxim, that the Crown can do no wrong (not confined to the criminal law, but extending to every branch of the executive), ought to be altered in the manner you have proposed. I say that I fear this, because the suggestion recommends itself at once to our common notions of justice and humanity. The existing rule is intended to discourage negligence, and to shut out fraud, which would otherwise occasion mischief far more serious than the accidental and very rarely occurring destruction of a man's character and life or happiness by the defective working of the social machinery, lamentable and lamented as such accidents must ever be. I am not sure even that the alterations you suggest would not increase the amount of unredressed hardships of the kind to which you refer. At present, where a man is tried once for all, every exertion is made that the importance and finality of the occasion demand. No hesitating juror, no careless counsel, can comfort himself with the reflection that the prisoner, if innocent, may appeal (for your proposal cannot be carried into effect without giving the right of appeal); no witness can hold back in the belief that his testimony, if it be important, may be brought forward at a new trial. Under the proposed system we may expect to hear from the criminal bench, or in the jury box, expressions like those which too often proceed from the lips of a Vice-Chancellor:—'I make the decree with hesitation, but I have the satisfaction of knowing that, if I am wrong, I shall be set right in another place.' How often will a carelessly-convicted person, penniless, in bonds, removed from the scene of action, be able to procure friends or funds for a successful appeal?

"Look, now, at the effect of such a change on the protection from crime and fraud of the innocent public—a much larger and more important class of innocents than that which finds its way to the docks, though too often overlooked by the professed advocates of humanity. Prosecutors and witnesses in posse are not easily induced to face the annoyance of a single trial. Will the prospect of a second encourage them? Moreover, by what statute of frauds and perjuries will you protect the revenue from the gainful trade of fraudulent prosecutions which will spring up when the Crown is made liable in damages? A voyage to Australia at the public expense, and an honourable acquittal, with 100*l.* damages on arriving there, would be a rational object of ambition to many an enterprising scoundrel.

"These, sir, are some of the grounds upon which I think it probable that the severe but salutary rule in question was founded. Let us endeavour to prevent as far as possible the recurrence of those deplorable cases in which its hardship is felt, by improving the administration of the law, but let us not lose sight of prudence in striving after an unattainable perfection of humanity."

DRACO.

THE BAR DINNER TO M. BERRYER.

At the dinner given by the English Bar to M. Berryer, in the Middle Temple, on the 8th November, more than 400 persons—guests and hosts—were present. The Attorney-General took the chair, and at the chief table on his right and left were M. Berryer, M. Desmarest (the bâtonnier of the French Bar), Lord Brougham, Lord Kingsdown, Lord Chief Justice Cockburn, the Chancellor of the Exchequer, Lord Justice Knight Bruce, Vice-Chancellor Wood, Vice-Chancellor Stuart, Mr. Baron Martin, Mr. Baron Pigott, Mr. Baron Bramwell, Mr. Justice Blackburn, Mr. Justice Byles, Mr. Justice Mellor, the Solicitor-General, Mr. S. H. Walpole, Q. C., M. P., Mr. Rolt, Q. C., M. P., Sir F. Kelly, M. P., Sir E. Ryan, Sir E. Wilmot, Sir W. Alexander, Q. C., Mr. Ingham, M. P., Mr. Roebuck, M. P., Mr. M. Smith, Q. C., M. P., Mr. W. Ewart, M. P., Sir H. Cairns, M. P., Mr. Stuart Wortley, Q. C., the Recorder of London, the Common Serjeant, Mr. Warren, Q. C., Dr. Twiss, Dr. Deane, Mr. Peacocke, M. P., Mr. J. Locke, M. P., Mr. G. Denman, M. P., Mr. J. J. Powell, M. P., Mr. Phinn, Q. C., the Judge-Advocate General, Mr. P. Erle, Q. C., Mr. Serjeant Parry, and Mr. Serjeant Ballantine.

The health of M. Berryer was proposed by the Attorney-General, and in reply

M. BERRYER said—Vous me croirez quand je vous dirai que je suis profondément ému à l'aspect de cette imposante et presque fraternelle réception. Je me vois accueilli au milieu de la grande et libre Angleterre; vous ne vous étonnerez pas qu'il y ait de trouble dans ma manière d'exprimer mes remerciements. Hier, Monsieur l'Attorney-Général, je vous félicitais et je félicitais ce grand et noble pays de voir l'Attorney-Général (spectacle rare pour nous) déployer un zèle aussi éclairé que sage pour seconder les associations qui ont pour objet de perfectionner la loi. Aujourd'hui, comme avocat, je me sens ému de vous voir parler, comme chef du barreau, au nom des avocats. Grand et beau spectacle, qui me rappelle que telle était la coutume de mon pays quand les Procureurs-Généraux et les Avocats-Généraux s'appelaient eux-mêmes les généraux des avocats. En me parlant au nom du barreau Anglais, vous daignez me complimenter sur les travaux de ma vie. J'avoue que je me sens humilié de ces compliments quand je me rappelle ce que furent les avocats Anglais, ceux qui m'ont honoré de leur amitié; ce que fut Lord Lyndhurst, que nous pleurons tous, et cet autre grand homme qui a voulu m'initier à toutes les grandes choses de ce pays—ce noble propagateur de tous les progrès, de toutes les institutions libérales même dans cette libre Angleterre, ce grand homme que je salue, Lord Brougham! Après 50 ans de travaux j'ai reçu de mes confrères de France un témoignage de fraternelle sympathie. Mais là j'étais au milieu de miens. J'étais soutenu par cinquante années de relations amicales. Encore une fois, j'étais auprès des miens; mais près de vous je ne saurais dire ce que je sens. Si, laissez-moi dire ce que j'éprouve en ce moment; il me semble que c'est la voix de la postérité que j'entends tomber de vos lèvres. Il y a une pensée plus féconde pour l'avenir qu'un hommage rendu à un seul homme. Il y a l'alliance des barreaux des deux nations les plus civilisées du monde. J'ai assisté à toutes les cours de justice de votre pays, à toutes les délibérations judiciaires, j'ai été frappé de la situation qui est y faite au barreau. Rien ne pouvait plus me toucher que ces entretiens familiers entre le juge et l'avocat. Cela prouve à ce dernier l'attention qui lui est accordée, et j'y vois une garantie pour le sentiment d'indépendance qui doit appartenir à cette noble profession. Je fais des vœux ardents pour que l'al-

liance des deux barreaux vienne à se cimenter. Nous ne pouvons en France avoir de ces réunions que la loi autorise dans ce pays; mais nous pouvons nous mettre en communication les uns avec les autres, et de ces communications naîtra, je l'espère, l'union des intelligences. Le barreau Français n'a pas, comme le barreau Anglais, fourni des hommes à toutes les situations de la vie politique. Au milieu de nos révolutions, les hommes qui se respectent n'ont pas voulu accepter d'emplois. Le barreau est resté l'asile de ceux qui, froissés dans leurs convictions, n'ont pas voulu fléchir. On compte parmi eux les hommes les plus éminents. Nous possédons le libre échange; mais il ne faut pas qu'il se borne à l'échange de soieries et des cotonnades; il faut que ce soit le libre échange des idées. Vous pourrez trouver chez nous beaucoup de choses bonnes à prendre. Nous rencontrons chez vous des écrivains instruits, éclairés; une presse puissante, que nous ne connaissons pas. Je vote pour l'alliance des deux barreaux, et je prie mon collègue de seconder mon vote.

THE ATTORNEY-GENERAL next proposed the health of M. Desmarest and the Bar of France.

In returning thanks,

M. DESMAREST said—Je suis ému quand je me lève pour répondre au toast si bon et si affectueux porté au barreau de France. L'union entre les deux barreaux a été le rêve de mon intelligence. Quand on considère les choses du monde (même après un banquet aussi splendide) il est impossible de méconnaître qu'il y a au monde deux influences, la force et la justice. Je ne veux pas dire de mal de la force; quant à la justice, c'est ici qu'il sied d'en dire du bien, devant votre gloire présente et devant votre gloire ancienne; permettez-moi d'ajouter en présence de ces deux porte-étendards du droit et de la justice, Lord Brougham et M. Berryer. Il existe une grande similitude dans leurs caractères. Tous deux ils ont porté bien haut la gloire intellectuelle; tous deux ils ont brillé dans les assemblées publiques; tous deux, enfin, sont membres de l'Académie Française. J'avoue que je serais troublé si je n'avais à apporter ici que le tribut de ma seule reconnaissance. Mais aussitôt que j'ai été informé de votre gracieuse invitation, j'ai profité de ces réunions légales autorisées en France pour dire à nos avocats l'honneur qui m'était fait. Tous, jeunes et vieux, m'ont répondu, "Allez en Angleterre." Je n'ai pas eu le temps de consulter les membres de notre barreau de province, mais tous m'auraient tenu le même langage—tous. Je vois la grande image du monde judiciaire de France donnant la main au monde judiciaire d'Angleterre, degré préliminaire pour amener entre nous une alliance plus intime, selon la belle idée de celui qui devrait être notre bâtonnier perpétuel, et qui est toujours notre bâtonnier moral. Messieurs, permettez-moi de dire mes cher confrères, vous nous avez donné l'exemple, soyez certain qu'il sera suivi. Un de vos hommes d'état, l'illustre Chancelier de l'Echiquier, disait dans une circonstance récente avec cette incomparable éloquence qui rappelle les beaux jours de l'antiquité, que, dans le temps où nous vivons, le progrès de la civilisation devait s'accomplir par des moyens plus doux que dans les temps passés. Ces paroles, qui concilient bien des difficultés, ont trouvé de l'écho en France. Je signe avec vous un traité d'alliance qui servira à la conquête pacifique du progrès.

M. RODOT also returned thanks on behalf of the junior Bar of France.

In acknowledging "The Judges of England,"

Lord Chief Justice COCKBURN said—I am sure I express the sentiments of all my brother judges when I say that we feel the highest gratification at this opportunity of expressing our admiration and respect

for the bar of France, and for the illustrious guests who so worthily represent it among us. We, who have to be students of jurisprudence, with a view to its administration, know how much that noble science is indebted to the illustrious jurists of France, whose labours have shed such light and lustre on that science. We, too, who have watched the celebrated trials which have occupied the tribunals of that country, have marked with admiration the brilliant eloquence, the vast attainments, the great reasoning powers, the knowledge and learning, the energy and independence of the bar of that great country. We rejoice to have the opportunity of paying the tribute of our respect to the French bar, and we rejoice that that opportunity has been afforded us in the person of its most distinguished member, as well of its official representative. Much as I admire the great abilities of M. Berryer, to my mind his crowning virtue—as it ought to be that of every advocate—is, that he has throughout his career conducted his cases with untarnished honour. The arms which an advocate wields he ought to use as a warrior, not as an assassin. He ought to uphold the interests of his clients *per fas*, but not *per nefas*°. He ought to know how to reconcile the interests of his client with the eternal interests of truth and justice. In all the great interests which he has upheld, M. Berryer has never forgotten the honour of the advocate, and for this I respect him as much as for the eminent talents which have cast so much lustre on his name and profession.

THE CHANCELLOR OF THE EXCHEQUER, in returning thanks for the House of Commons, said—My honourable and learned friend has spoken of the title by which I have the privilege of addressing this great assemblage; but I will venture to ask one favour of you, and that is, that you will not exercise your legal ingenuity in endeavouring to discover any flaws in it. But be it as a judge or as a layman, I rejoice to be permitted to join you in the tribute of respect and admiration to the guests whom you entertain to-day. Rare are the occasions when it is in the power of an individual member of the House of Commons to make himself the organ of its sentiments; but I am well assured that this is one of those few occasions on which if the House of Commons had it in its power to speak by a single voice, it would express its profound sympathy with the enthusiasm which pervades this assembly. So profound and lively is the sympathy which runs through all our political institutions, and so closely and inseparably is the House of Commons associated with all our utterances, our feelings, and political habits, that if it were torn away from the constitution of England (were such a thing possible), England would cease to be what she is. Those who in this country pursue the business of legislation, and those who are charged with the special business of government, the longer they live and the wider their experience grows, become more deeply convinced of the inestimable value and the indispensable necessity of a free and fearless bar, in order to secure the liberties of the country. We have been told to-night, in eloquent terms, what have been the recent achievements of your illustrious profession on behalf of liberty; and if we go back to the dark times of our history—to the reign of James II, and the trial of the seven bishops, for instance—we find that whenever there has been a question of examining into, searching out, and vindicating the liberties of England, the bar of England has always stood in the foremost rank. I have always felt that the bar is inseparable from our national life—from the security of our national institutions; but never, so long as I looked at England

alone, did I understand the full extent of its value. Some years ago it was my lot to be witness of cruel oppression in a country in the south of Europe. There the executive power did not merely break the law, but deliberately supplanted it, and set it aside, and established in its stead a system of pure arbitrary will. To my astonishment I found that the audacity of tyranny, which had put down chambers and municipalities, and which had extinguished the press, had not been able to do one thing—to silence the bar. I heard in the courts of justice, under the bayonets of soldiers, for they bristled with bayonets, in the teeth of power, in contempt of corruption, and in defiance of violence and arbitrary rule, lawyers rising in their places and defending the cause of the accused with a freedom and fearlessness which could not have been surpassed in free England, or even by M. Berryer himself. We are not here to discuss the merits of particular schools of public opinion, but we are here for more purposes than one; and one of our purposes, I believe, is to add another to the many testimonies which recent history has afforded of the growth of a cordial and hearty sentiment between the two great nations of France and England. As there are ties which bind together different classes of the same country, so there are electric currents which pass over the boundaries of political divisions and establish sympathies that run throughout the world. Those sympathies animate the hearts of our illustrious guests, and throb with equal power in the breast of every member of this great assemblage. I may be permitted to look on you from without, but at the same time to express my sincere concurrence in the tribute of admiration which has been rendered to M. Berryer personally and to the great achievements of his life—a life which, great as it is by its achievements, is yet greater by its devotion to the indestructible principles which are involved in the constitution of a free and independent bar, bound by the highest obligation to speak with the voice of truth under all circumstances. M. Desmarest has spoken of the moral force which he hopes to see pre-eminent; and I believe with him, that, by the wise counsels of Providence, we may hope to see arising, and day by day slowly but surely progressing and enlarging the dominion of that moral force, by the influence of which the brute and barbarous violence of old will gradually come to have less and less effectual action on the conduct of mankind.

The remaining toasts were "The Committee," for which Sir F. Kelly returned thanks; and "The Health of the Chairman," proposed by Lord Justice Knight Bruce, after which the company separated at a late hour.

COPY OF LETTER TO THE LORD CHANCELLOR ON THE SUBJECT OF PROFESSIONAL REMUNERATION, AND HIS REPLY.

To the Right Hon. Richard Baron Westbury, Lord High Chancellor of Great Britain.

Liverpool, October, 1864.

My Lord,—We, the committee of the Liverpool Law Society, have noticed with satisfaction that your Lordship has brought before Parliament the subject of the remuneration of attorneys and solicitors, by a bill introduced by your Lordship into the House of Lords in the last session of Parliament. Anticipating that your Lordship will probably in the ensuing session follow up the step you then took, by introducing the same or some other measure with the same object, we take the liberty of addressing the following remarks to your Lordship in support of the objects sought to be attained by the said bill.

* See, however, Lord Brougham's famous assertion of the duty of counsel, in his defence of Queen Caroline.

It is scarcely necessary for us to point out that the subject of the remuneration of attorneys and solicitors is not a mere selfish question, in which those of our own profession are exclusively interested, but that so long as solicitors have such important functions to discharge, and such grave responsibilities as at present devolve upon them, it is a matter of the most serious importance to society at large that the class of men who fill that office should be educated and high-minded gentlemen, and that, however rigidly admission to the profession may be regulated, all such regulations will be insufficient to secure a suitable class of candidates, unless the profession offers, upon the whole, a remuneration not less upon the average than is offered by the other callings which are open to the educated middle classes. The public must ultimately suffer by any regulation which, whether by limiting the remuneration, or in any other way, has a tendency to cause the attorneys of England to be recruited from a lower class of society.

The best proof that the remuneration of attorneys and solicitors is not at present sufficient to secure a permanent supply of candidates from the educated classes, is the consideration of the changes which have taken place in the amount of that remuneration.

In a relation so intimate and so confidential, and, therefore, so liable to abuse as that of attorney and client, the law properly intervenes to regulate the remuneration which the attorney shall be entitled to require for his time and labour; and the remuneration of the attorney for a fixed work is, therefore, a fixed sum, but the relation of such fixed remuneration to the work which it represents has become much altered since it was first fixed; because the measure of the value of an attorney's labour has been stationary for many centuries, whilst the value of all other commodities has been steadily advancing. This is proved by the retention in an attorney's bill, and in that only of the sum of 6s. 8d., the value of the extinct coin called a noble, which has not been in common use for at least two centuries. We should, however, prefer to rest our proof of the present inadequacy of the remuneration of attorneys, mainly upon the changes which have taken place within the memory of the present generation. If it may be assumed that the remuneration of attorneys fifty years ago was not excessive, but merely sufficient to secure an adequate supply of educated practitioners, it may be easily shewn that the present scale of remuneration must be grossly inadequate. For within that period many changes in the law have taken place which have had the effect of totally altering the scale of attorney's remuneration. Even fifty years ago the remuneration given by law for many things that an attorney was required to do was, it is respectfully submitted, inadequate to the labour and skill required, but such inadequacy was partially compensated by the remuneration allowed for many matters of form and routine that required little or no labour or skill on the part of the principal; and consequently when such matters of form and routine were abolished, and the remuneration attending them was consequently lost, the residue of business, consisting of matters really requiring labour and skill, became the sole subject-matter of the attorney's business, and the inadequacy of the remuneration, told more strongly on the average profits of the profession. The principal changes in the law, which we submit have had the effect we refer to, are the following:—

1. *The Abolition of Imprisonment for Debt on Memento Process.*

Fifty years ago the custom was to commence every action for debt by holding the debtor to bail, upon

which the plaintiff's costs amounted to 10l. and upwards for each defendant, without more labour than is now involved in issuing an ordinary writ of summons, the costs of which are from 2l. to 2l. 10s.

2. *The Abolition of the Jurisdiction of the Superior Courts in Actions under 20l.*

Before the institution of the county courts, a main part, if not the principal part, of the profit of common-law business resulted from the actions under 20l., which were brought in considerable numbers, in cases where no doubtful questions of law or fact existed, and involved little or no trouble to the practitioner. The scale of costs in the county courts is such that few attorneys can afford to practise before those tribunals.

3. *The Abolition of Fines and Recoveries.*

The only real labour and skill involved in a fine or recovery was in the preparation of the deed to declare the uses or to make a tenant to the precipe. The formal part of the business, with its remuneration, is now gone; the deed remains under a different name.

4. *The Abolition of the Lease for a Year.*

This document, formerly an almost invariable accompaniment of every conveyance or mortgage of freehold property, was of so simple a character that it was usually not drafted at all, nor did the solicitor take any trouble whatever about it, but it was ingrossed by the law stationer from a common form, taking the parcels and the names of the parties from the draft release; so that on almost every conveyance of freehold property fifty years ago, the solicitor for the purchaser or mortgagee was paid 1l. 1s. and upwards in addition to his present charges, without taking any additional trouble.

5. *The Abolition of Attendant Terms.*

The assignment of attendant terms was only less a matter of form than the lease for a year. It was usually drawn in the solicitor's office, but when the release was prepared it presented no difficulty whatever, and could be readily drafted from the abstract by a clerk without legal knowledge, but was paid for at the same rate as the main deed of conveyance of the freehold. The past devolution of the term also generally increased the length of the abstract without a corresponding increase of the difficulty of the title.

6. *The Introduction of the Practice of printing Proceedings in Chancery, &c., and the greater Brevity of Bills, have cut off the Remuneration formerly received by Solicitors for Copies of lengthy Proceedings copied by a Stationer at 2d. a Folio, and charged for in Costs at 4d.*

We would here respectfully assure your Lordship that we do not object to any of the measures of reform above noticed, but, on the contrary, approve of them highly; nor do we contend that the profession is in the long run injured by the abolition of any sort of work that can be shewn to be unnecessary. It is needless to remark that the sweeping away of so large a portion of the business of attorneys, by decreasing the total amount of business to be divided amongst a fixed number of practitioners, has involved very considerable loss, and no little suffering to the generation who were in practice when those changes were made. That such is the case is proved by the fact, that the number of attorneys has remained for many years past nearly stationary, whilst the general population of the country has largely increased, and the wealth and business of the nation still more largely. The loss that has been so entailed upon our branch of the profession has been serious, but has resulted from the abolition of abuses which have been swept away for

the benefit of the community at large, and the class who benefited by those abuses, though they have suffered from the change, have not thereby acquired any claim for legislative relief. But that to which we do seek to direct the attention of your Lordship, is the *indirect* effect of the changes in question, namely, that whereas fifty years ago the remuneration of an attorney for an attendance charged 6s. 8d., or for the drawing of a draft charged 1s. a folio, or for the instructions for a draft charged 6s. 8d., may have been (though we submit that owing to the gradual alteration in the value of money it was not) just as inadequate as it is now. Yet inasmuch as the payment for what an attorney really did do, was then accompanied by payment for a variety of things which he did not do, or for which he was over paid—the average remuneration for a life of labour expended in the profession of an attorney was, fifty years ago, far more than it is at present. Either, therefore, the average remuneration of attorneys fifty years ago was far too high, or it is now far too low.

It is, however, not necessary that we should rest our case solely on the above general argument, as it will be easy to see, from a very cursory examination of the charges usually allowed to attorneys on taxation of costs, that they are grossly inadequate where the thing to be done involves real labour.

For example: 6s. 8d. is the ordinary charge allowed for an hour's labour, and if a whole day is consumed the taxable charge is 2l. 2s.

For drawing a deed of fifty folios the remuneration would be just 2l. 10s.

It is needless to multiply instances further, as the above items substantially govern the scale of charges, and affect the whole system of taxation of costs.

The remedy proposed by your Lordship for this state of things is, that attorneys should be allowed, with certain restrictions, to make special bargains with their clients for extra remuneration. Whilst approving of this alteration, we venture to submit to your Lordship, that it will not go to the root of the evil. So long as the legal scale of costs remains as it is, it will be considered by the public, that a practitioner bargaining for an extra remuneration is taking some advantage of them, and the extent to which the privilege conferred by your Lordship's bill will be made use of is, in our opinion, very limited. We believe the real cure to be, the *alteration of the ordinary scale of remuneration*; and we submit to your Lordship, that the considerations above set forth shew that such an alteration would merely be in the nature of a readjustment of the scale of payment for work which has been deranged, by an alteration in the nature of the work to be done, and bringing back the average remuneration for real labour towards the same rate at which it formerly stood.

This end, we would suggest, should be accomplished by rule of court, superseding the present scale of costs, and substituting higher rates.

The following are the chief alterations which we would suggest to your Lordship should be made:—

1. A formal attendance not consuming much time, and where no advice was given on new facts, might be charged, as now, 6s. 8d.; but when an attorney is asked to advise on difficult questions of law, 10s. 6d. or 13s. 4d. should be allowed, and a continuous attendance of an hour's duration should, in all cases, be allowed 13s. 4d.
2. The instructions for a conveyance, mortgage, or settlement, when the subject-matter was of the amount or value of 300l. or upwards, should be charged 13s. 4d.; and for matters of the amount or value of 600l. and upwards, a further *ad valorem* fee; or a gradual scale should be allowed

—say, for example, 10s. for purchases or settlements, and 5s. for mortgages, for every 100l. above 500l. up to 2000l., and half those amounts for every 100l. above 2000l.; and attending completing should, in all cases above 300l., be allowed 13s. 4d.

3. Attendance before an arbitrator, or in court, as an advocate, should be allowed 1l. 1s. an hour.
4. A suitable charge for brief, or other preparation, should be allowed to an attorney attending as advocate before an arbitrator.
5. A journey per day, or a day's continuous labour at home, should be allowed 5l. 5s.
6. In Chancery business the papers prepared as instructions for bill, which really involve the main responsible duty of the plaintiff's solicitor, should be fully allowed for in taxation between party and party at the same rate as a case for the opinion of counsel would be allowed as between solicitor and client.
7. In common law. Attending court when the cause is in the paper should be allowed for at 2l. 2s. a day; when tried, 5l. 5s. a day.
8. In both common law and Chancery letters between the country attorney and the agent should be allowed for at the usual rate. Any letters exceeding three folios should be chargeable at 1s. a folio, like any other document.

We venture respectfully to submit the above considerations to your Lordship, without professing thereby to have exhausted the subject, but as what appear to us the main grounds for an alteration of the present system, and as an indication of our view of the sort of alteration required. And we submit to your Lordship an expression of our opinion, that by offering an adequate remuneration for real labour, the hands of the respectable part of the profession who use their efforts to discourage useless or improper litigation, to shorten needless verbiage and useless inquiries, and otherwise to co-operate with the real reformers of the law, will be so strengthened that the public will be directly as well as indirectly the gainers. Unless the profession of an attorney and a solicitor offers the same prospect of remuneration as mercantile life to the youth of the middle classes, the educated middle classes will not bring up their sons to it, but it will fall into the hands of a lower section of society, for whose honourable conduct there will not be the same security.

We are, my Lord, your most obedient servants,
For the Committee of the Liverpool Law Society,
WILLIAM A. JEVONS, President.
WM. CLARE, Hon. Sec.

Hackwood Park, Basingstoke.

The Lord Chancellor presents his compliments to the President and Committee of the Liverpool Law Society. He has received their memorial, which contains matter requiring the most serious consideration. The Lord Chancellor begs leave to suggest the propriety of their communicating with other law societies on the important subject of their letter to him.

It would afford the Lord Chancellor very sincere pleasure to be auxiliary in removing the just subjects of complaint which exist in the unfair regulations that now injuriously affect the profession of attorneys and solicitors; but this cannot be effected unless there be a pretty general agreement among the members of that profession as to the alterations that ought to be made.

Oct. 22, 1864.

PUBLIC EXAMINATION OF STUDENTS.

MICHAELMAS TERM, 1864.

At the Public Examination of the Students of the Inns of Court, held at Lincoln's Inn Hall, on the 29th and 31st October, and the 1st November, 1864, the Council of Legal Education have awarded to—

Charles Frederick Farran, Esq., student of the Middle Temple, a studentship of fifty guineas per annum, to continue for a period of three years.

Maurice Foster Farrell, Esq., student of the Middle Temple, an exhibition of twenty-five guineas per annum, to continue for a period of three years.

William Thomas Charley, Esq., student of the Inner Temple; Nathaniel Nathan, Esq., student of the Inner Temple; and Alexander Henry, Esq., student of the Middle Temple, certificates of honour of the first class.

Charles Gurdon Kemball, Esq., student of the Inner Temple; Sir Charles Lawrence Young, Bart., student of the Inner Temple; Iltudus Thomas Pritchard, Esq., student of Gray's-inn; John William Bacon Grey, Esq., student of the Inner Temple; Charles Wager Byalls, Esq., student of the Middle Temple; Wesley Tom, Esq., student of the Middle Temple; Robert Mitchell, Esq., student of the Middle Temple; Edmund Thomas, Esq., student of the Middle Temple; Thomas William Snagg, Esq., student of the Middle Temple; James Albert Clement Tabor, Esq., student of the Inner Temple; and Amable Emile Lanongarède Bazire, Esq., student of the Inner Temple, certificates that they have satisfactorily passed a public examination.

By order of the Council,
(Signed) WESTBURY, C., Chairman.

CAUSES MOVED IN MICHAELMAS TERM.

COURT OF QUEEN'S BENCH.

NEW TRIALS.

Midd.—Hall v. Lawrence
 Lond.—Waters v. Mansfield
 Durb.—Ecclesiastical Commissioners for England v. Peart
 —Taylor v. Shafto
 Manch.—Challinor v. Hall
 Liverp.—Whitty v. Royden
 —Wilde v. Manchester, Sheffield, and Lincolnshire Railway Co.
 —Stuart v. Berrisford
 Linc.—Bills & an. v. Smith
 York—Ackroyd v. Barningham

Salop—Brotti v. Whiston
 Monmouth—Nott & an. v. Great Western Railway Co.
 —Symons v. Pickley & ors. (Not to be argued till decision in Exch. Chamb.)
 Bristol—Prothero & ors. v. United Merthyr Collieries Co. (Limited)
 Surrey—Biddle v. Bond
 Leicester—Keightley v. Cumberland
 Cambridge—Manaprice v. Westley
 Suffolk—Cowles v. Potts.

CROWN PAPER.

Lancashire Fox v. Grimshaw.
 Cornwall Thomas v. Marshall.
 Yorkshire Overseers of the Poor of the Township of Huntewid with Tordby and Nostal v. Overseers of the Poor of Morley.
 — Reg. v. Overseers of the Poor of the Township of Calverly with Farsley.

COURT OF COMMON PLEAS.

NEW TRIALS.

Midd.—Elwood v. Christy
 —Mallon v. Radloff
 Lond.—Lapostolat & an. v. Halliday & ors.
 —Hogg v. Skeen
 —Hobbes v. Rayne
 —General Discount Co. (Limited) v. Stokes
 Surrey—Capel v. Powell & an.
 Nottingham—Waters v. North
 Manch.—Crabb & Curtis
 Liverp.—Neill v. Whitworth
 —Swire v. Leach
 —Farnworth v. Hyde
 Durham—Graham v. North-eastern Railway Co.

Manch.—Flelding v. Lee
 Bedford—Parker v. Anstee
 Leicester—Bourne v. Fosbrooke

Cornwall—Gaved v. Martyn
 —Same v. Same
 Midd.—Chubb v. Hutson
 —Soules v. Shekleton.

SPECIAL PAPER.

Governor, &c. of the Bank of England v. Morrell (D.)
 Langmead v. Maple (D.)
 Killby v. Wright (D.)
 Wednesday, Nov. 16.
 Hodson v. Moulson (Case by order)
 Lower v. Rickman & an. (D.)
 Langton & an. v. Waring (Ca. by order)
 Penny v. Brice (Ca. by order)
 Semanra v. Brinsley (D.)
 Monday, Nov. 21.
 Special Arguments.

APPEALS FROM REVISING BARRISTERS.

To be heard, Friday, Nov. 18, Saturday, Nov. 19, Tuesday, Nov. 22, and Wednesday, Nov. 23.

Steele v. Bosworth (Leicester, North Division)
 Cram v. Cole (Borough of Devonport)
 Blain v. Overseers of Pilkington (Bury, Lancashire)
 Gaydon v. Bencroft (Borough of Barnstaple)
 Roberts v. Percival (Peterborough, Northamptonshire)
 Roberts v. Drewitt (Oxford)
 Baker v. Locke (Borough of Taunton)
 Benesh v. Booth (City of London)
 Heelis v. Blain (Manchester, Lancashire)
 Tepper v. Nichols (Wandsworth, Surrey)
 Powell v. Guest (Borough of Kidderminster)
 Powell v. Hughes (Borough of Kidderminster)
 Powell v. Bradley (Borough of Kidderminster)
 Powell v. Allen (Borough of Kidderminster)
 Powell v. Jones (Borough of Kidderminster)
 Smith v. Foreman (Ashford, Kent)
 Powell v. Pugh (Borough of Kidderminster)
 Powell v. Farmer (Borough of Kidderminster)
 Powell v. Boraston (Borough of Kidderminster)
 Fletcher v. Boodle (Borough of Cheltenham)
 Scott v. Durant (Borough of New Windsor)
 Freeman v. Gainsford (Sheffield, Yorkshire).

Notice.—On and after Thursday, the 10th instant, the Court will proceed with the cases in the paper of New Trials moved in the present Michaelmas Term.

COURT OF EXCHEQUER.

NEW TRIALS.

Midd.—Coah v. Bailey
 Lond.—Scott v. London Docks Co.
 —Price v. Kirkham
 Cambridge—Miller v. Shee
 Manch.—Nicholson v. Lancashire and Yorkshire Railway Co.
 Liverp.—Hughes v. Potter
 Exeter—Cornish v. Cleife
 Bristol—Brooks v. Bates
 Warwick—Fowell v. Tranter
 York—Carr v. Lambert & ors.
 Leeds—Nicholson v. Lancashire and Yorkshire Railway Co.
 —Richardson v. Marsden
 Oxford—Foster v. Gammon
 Worces.—Caddick v. Terry.

SPECIAL PAPER.

FOR JUDGMENT. FOR ARGUMENT.
 Longland v. Andrews (Special Case)
 Longland v. Doling (Sp. C., heard Nov. 7)
 Garrod v. Simpson (D., heard Nov. 7 and 9)
 Clark v. Magnus (Not to be argued till after issues in fact tried)
 Evans v. Jones (Sp. C. by ord.)
 Conington v. Robinson (D.)
 Cooke v. Mostyn & ors. (D.)
 How v. Greek (D.)

SITTINGS IN ERROR.

QUEEN'S BENCH.

Saturday Nov. 26 | Monday Nov. 28
 Tuesday Nov. 29.

COMMON PLEAS.

Wednesday Nov. 30.

EXCHEQUER.

Thursday Dec. 1 | Friday Dec. 2

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THE JURIST.

LONDON, NOVEMBER 19, 1864.

EACH great political party promises law reform, and each succeeding session of Parliament is opened by a speech from the Throne, in which the Sovereign, by the mouth of the Lord Chancellor, announces that important measures for effecting amendment in the law will be laid before Parliament. It is, therefore, desirable to consider what branches of our municipal law call for more immediate amendment. The law of marriage, as it prevails in the United Kingdom, has been a good deal discussed since the case of *Yelverton v. Yelverton* was tried in Ireland, and an issue raised as to the validity of a marriage alleged to have been valid both as an Irish and Scotch marriage. That case was again brought prominently before the country, on appeal from the Scotch Courts to the House of Lords. The main question raised on appeal was, whether there was a marriage by a promise *de futuro cum copula*; and after hearing an immense amount of evidence, their Lordships, though differing in opinion, decided that no such marriage was proved. The case has been discussed both by the public and the profession, and both have denounced the law as bad, and as needing reform. The chief fault found seems to be the want of unity in the law of the three kingdoms. Let us then inquire what are the essentials to creating a valid marriage contract in each country. In England up to the time of the passing of Lord Hardwicke's Act in 1753, there were three different modes of creating a valid marriage contract. First, there was a solemn celebration in *facie ecclesiæ*, in the main similar to a marriage as now celebrated between members of the Church of England; secondly, clandestine marriages, which had the bare sanction of having been celebrated by an ordained minister, and no other formality whatever; thirdly, marriages by consent, or, as they were sometimes called, consensual marriages. These last were valid by an immediate interchange of consent to a present contract of marriage. It was a form of marriage at that time perfectly valid, not recognised, indeed, by the temporal courts till a celebration had taken place in church, but either party could compel celebration. Till celebration the husband had no title to his wife's personalty; nor had the wife of such a marriage the rights of coverture; nor were the issue legitimate; but neither of the contracting parties could enter into any other contract of marriage during the life of the other. Thus stood the law of England till the 26 Geo. 2, c. 33, which aimed, as the preamble shews, at clandestine marriages; sect. 8 renders a marriage celebrated without banns or a license null and void; by sect. 13, persons married by consent are deprived of the only means of making such a marriage perfect, for it declares, that no suit shall be brought to compel celebration. The act imposes, as legal requisites to a valid marriage contract in England, publication of banns or a license, and the presence of two witnesses besides

the officiating minister; and an entry in the register, signed by the minister, contracting parties, and witnesses; and the marriage must take place between the hours of eight and twelve. The act renders void the marriages of persons under age without the consent of parents or guardians. The stat. 4 Geo. 4, c. 76, amended Lord Hardwicke's Act in certain particulars; but in substance, the law as to the marriage of members of the Church of England is governed by Lord Hardwicke's Act, the only important alteration in the law created by the act of Geo. 4 being a repeal of that portion of Lord Hardwicke's Act which rendered null and void the marriage of persons under age without consent of parents or guardians. The last-named act, instead of making such a marriage void, imposes a penalty on the guilty party of forfeiture of all property accruing on the marriage. The requisites of Lord Hardwicke's Act were found to give great offence to every denomination of dissenter, and in consequence the 6 & 7 Will. 4, c. 85, was passed, which enables persons who object to marry in *facie ecclesiæ* to repair to the registrar, and upon giving certain notices, and procuring certain certificates, to marry either before that officer or in any registered place appointed for the purpose; two witnesses are, however, necessary, and the marriage must take place between the hours of eight and twelve. Ireland, until the 58 Geo. 3, c. 81, followed the continental law in respect of the constitution of the marriage contract. That statute, however, extended the provisions of Lord Hardwicke's Act to Ireland. The law in that country, as amended by the 7 & 8 Vict. c. 81, is almost similar to the law of England. The law of marriage differs in Scotland most materially from the law as it now is in England; chiefly, however, because the provisions of Lord Hardwicke's Act do not apply to Scotland. The marriage contract in Scotland is governed by the ancient law of Europe. There the maxim of the Roman law, "*Consensus non concubinitas facit matrimonium*," prevails. Marriage is a mere civil contract, independent of any formality whatever. It is true, marriages in *facie ecclesiæ* are by far the most common even in Scotland, still marriages by consent, or consensual marriages, are perfectly valid for all purposes. Marriages in *facie ecclesiæ* are by the law of Scotland to be celebrated in compliance with the orders of the Kirk, which requires a proclamation of banns, and a celebration by a minister of the Church of Scotland, in the presence of two witnesses. There is, however, no formality required. The Scotch law still hold as valid a clandestine marriage, being a marriage similar to that of the same name valid in England until the passing of Lord Hardwicke's Act, the only requisite being the presence of a priest. This form of marriage is of all the least common. Then there is the marriage by consent, which is either *per verba de presenti*, when the parties deliberately accept each other as man and wife, when consummation is presumed, or *per verba de futuro cum copula*; as where the words are not of present import, but only amount to a promise of marriage, and *copula* follows, but the *copula* must be proved. This was

the canon law which was the basis of all matrimonial law in Europe; and Scotland in this respect followed the canon law. The leading case as to a marriage per verba de presenti, is that of *Dalrymple v. Dalrymple* (2 Hagg. Consist. 54), where Lord Stowell reviews the whole subject. A leading case as to a marriage by promise de futuro cum copula, is the case of *Pennycook v. Grinton* (12 Morr. 677). It must, however, be distinctly proved that the promise preceded the copula, for a promise after copula does not constitute marriage, unless intercourse be renewed in such a way as to shew that the new copula follows upon, or is connected with, the promise. (See Bell's Dic. and Dig. of the Laws of Scotland, tit. "Marriage"). In order to prove the promise the contract must be in writing, or it must be proved on oath. The promise must be made in Scotland, but the proof of it may be by the writing of the party promising made anywhere. (Vide judgment of Lord Wensleydale in *Yelverton v. Yelverton*). This license of the law of Scotland in permitting a marriage contract to be perfect, without any formality or publicity whatever, has led to uncertainty as to the validity of so many Scotch marriages; and when we bear in mind that the law of domicile does not effect the validity of the marriage contract, it nearly touches our marriage law in England. Thus, formerly, if two persons went into Scotland for a few minutes, and in the presence of two witnesses acknowledged each other to be man and wife, a perfectly valid marriage was contracted. Lord Brougham's Act has, however, to some extent, remedied the more pressing evils likely to arise from the facility for contracting a hasty or imprudent marriage prevailing so near this country. The 19 & 20 Vict. c. 96, has, however, put an end to what were familiarly known as Gretna Green marriages, and renders it necessary that one of the contracting parties to such a marriage should have resided in Scotland for twenty-one days previous to such marriage. Lastly, there is the marriage by habit and repute, which is a good marriage by the law of Scotland. It is founded on the principle, that it would be unjust to permit a man to introduce a woman as his wife, and treat her as such, and afterwards to permit him to degrade her from that status. But if the habit and repute have begun by avowed concubinage, a palpable change of purpose must be shewn in order to establish a marriage by habit and repute. (See Bell's Dictionary and Digest of the Law of Scotland). As to the degrees of consanguinity and affinity, the laws of England, Scotland, and Ireland agree. We may here, too, remark, as to the whole question of the law of marriage, that though the *lex loci* governs the contract, yet the *lex loci* will not be allowed to decide whether a marriage is within the prohibited degrees; for it has been said that no law ought, for the sake of comity, to give effect to a foreign law which is contrary to its own policy or morality. See Paterson's Compendium of English and Scotch Law, and the cases of *Fenton v. Livingston*, 31 Scotch Jur. 578, and *Brook v. Brook*, 3 Sm. & G. 481, where the late Sir Cresswell Cresswell, when called in to assist Vice-Chancellor Stuart, deli-

vered an elaborate judgment, deciding that a marriage celebrated during a temporary residence in Denmark, between an English widower and his deceased wife's sister, was null and void, although, by the law of Denmark, marriages between persons so related by affinity are lawful. This decision is very important, because, but for it, persons desirous of evading the law, in respect of contracting a marriage within the prohibited degrees, had only to take care and select a country where the degree of affinity sought to be infringed is not prohibited, and contract a perfectly legal marriage according to the law of such country. History shews us, that in most countries some formalities attend the entrance into the married state; certainly in all civilised countries consequences of the utmost importance, both to person and property, follow upon that contract. It must, therefore, of necessity be admitted, that uncertainty as to the validity of so important a contract is to be deplored; indeed, the disastrous consequences of uncertainty have been fully disclosed in the case of *Yelverton v. Yelverton*. That the validity of a marriage should depend in any case on evidence of no fixed kind, is most unsatisfactory. It is difficult to say what possible benefit can arise from such a law prevailing in any country; least of all in such a country as Scotland, where the family tie is drawn even closer than in England, and where the tenure of land has departed even less than in England from its feudal character; where, too, there are enormous estates the subject of strict entail. It may not be the duty of England to press upon Scotland any measure to reform her municipal law; still less a branch of it so eminently social as the law of marriage; at the same time, all will admit that the sooner the law of the three kingdoms, in respect of marriages, is assimilated, the sooner will the annals of the House of Lords, as an appellate jurisdiction, be freed from the melancholy disclosures which now incurber its pages. The present Lord Chancellor has, in the *Yelverton* case, had the whole law brought fully before him, and must be well aware of the evils arising from the uncertainty of such a state of law prevailing in Scotland. Uncertainty, always painful, is doubly distressing upon such a subject as the fact of marriage. This might be said to be a just retribution in many cases; but the punishment is unfortunately attached to the innocent as well as the guilty. Let us hope that something may be done to put an end to such a state of the law, and that Lord Westbury will add another to his great measures for the amendment of the law, by an act rendering necessary some public formality to the contracting of all future marriages in Scotland.

WINTER ASSIZES.—Mr. Baron Channell, one of the judges assigned to take the Winter Assizes, has appointed the following towns and times for so doing:—Winchester, Thursday, Dec. 1; Hereford, Thursday, Dec. 8; Chelmsford, Monday, Dec. 12; Maidstone, Thursday, Dec. 15; Lewes, Wednesday, Dec. 21. These are the days for opening the commissions at the respective places. Business will begin at ten o'clock on the following morning.

Correspondence.

NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE, WITH WHICH IS UNITED THE SOCIETY FOR PROMOTING THE AMENDMENT OF THE LAW.

TO THE EDITOR OF "THE JURIST."

1, Adam-street, Adelphi, W.C.
Nov. 16, 1864.

SIR,—The second meeting of the Department of Jurisprudence and Amendment of the Law will be held here on Monday next, the 21st instant, when a paper will be read by Mr. Alfred Waddilove, D.O.L., on "The Expediency of abolishing the Rules of Evidence which exclude the Testimony of the Parties in certain Civil Suits, and of Defendants in Criminal Trials."

Sir Fitzroy Kelly, Q.C., M.P., will take the chair at eight o'clock.

We are, Sir, your obedient servants,

GEORGE W. HASTINGS,
General Secretary.

G. HARRY PALMER,
ARTHUR J. WILLIAMS,
Secretaries of the Department.

°° The Standing Committee of the Department will meet at seven o'clock.

TO THE EDITOR OF "THE JURIST."

SIR,—I beg, through the medium of your columns, to inform those of your readers who may be articulated clerks, that a memorial to the council of the Incorporated Law Society lies for their signature at Mr. W. Harrison's, law stationer, 116, Chancery-lane, a few doors south of the hall of the society.

The object of the memorial is to ask the council to establish law classes, or else to amplify the lectures which are annually delivered under their superintendence, so as to admit of personal intercourse and close communication with the lecturers.

It is intended to present with the memorial a sort of report, embodying the substance of several letters which I have received from the members of both branches of the Profession, expressing for the most part their approval of the course now being adopted; and, among others, letters from the Master of the Rolls, Sir J. P. Wilde, Vice-Chancellor Sir W. P. Wood, Sir Fitzroy Kelly, Mr. Daniel, Q.C., Mr. J. G. Phillimore, Q.C., &c.

If those gentlemen who are unable to attend personally to sign the memorial will authorise me or some one else to do so, I shall feel obliged.

It will give me great pleasure to receive suggestions for the management of the proposed classes, as well as remarks upon the existing means for the instruction of articulated clerks generally, in whose education I take a deep interest, being myself one, and feeling most acutely the great disadvantage under which we labour in this respect.

Sincerely hoping, Sir, that you will be pleased to insert this letter in your journal,

I have the honour to be, Sir,

Your obedient servant,
W. J. FRASER.

78, Dean-street, Soho, W.
Nov. 17, 1864.

NEW GENERAL ORDER IN BANKRUPTCY.

THE BANKRUPTCY ACT, 1861.

Friday, Nov. 11.

From and after the 1st December next, numbers 47 and 51 of the Rules and Orders made in pursuance of the Bankrupt-law Consolidation Act, 1849, and dated the 19th October, 1852, shall be, and the same are hereby, rescinded, and it is ordered as follows:—

1. That thenceforth no messenger or usher of the Court of Bankruptcy in London, or of any district court of bankruptcy, or any clerk or other person employed in any department of either of such courts, shall make any office copy, or other copy, of any petition, affidavit, order, or other document or proceeding, filed in such courts, or of any bill of costs left with the Master, or with any registrar thereof, for taxation.

2. That in the court in London all office copies of every such petition, affidavit, order, document, or proceeding aforesaid, and of every such bill of costs aforesaid, shall be made under the direction and control of the chief registrar of the court; and that in the district courts all such office copies shall be made under the direction and control of the respective registrars thereof, and no office copy whatever shall be made or delivered out, except on a written requisition by the solicitor or party requiring the same, addressed to such chief registrar, or other registrar aforesaid.

3. That all office copies shall be made by such person as the chief registrar, or other registrar aforesaid, shall appoint, and shall, except as to figures, be fairly written at length, and shall be sealed with the seal of the court, and delivered out by the person so appointed without any unnecessary delay, and in the order in which they shall have been bespoken, and not more than three halfpence per folio of ninety words shall be charged or paid for any office copy so made and delivered out.

4. That no fee shall be allowed for attending to bespeak office copies, or for attending to receive the same.

WESTBURY, C.

W. S. AYRTON.

T. B. H. ABRAHALL.

JURIDICAL SOCIETY.

A MEETING of this society was held on the 14th inst., at No. 4, St. Martin's-place, Trafalgar-square. The Hon. George Denman, M.P., Q.C., presided.

A paper was read by the Rev. F. D. Maurice, intitled, "Ought any Person to be excluded from giving Evidence on the Ground of Religious Unbelief?" Two questions were involved in the discussion. One concerned the worth of an oath as a test of the credibility of a witness; the other concerned its worth as affecting the conscience of a witness, hindering his inclination to falsehood, and giving him a bias towards the truth. It seemed to him, after considering the authorities on the subject, that religious unbelief ought not to be a reason for excluding a person from giving evidence in any case. He did not ask that oaths should be abolished if persons were willing to take them, but let a person who declined to take an oath be permitted to decline it without proving that he was a Quaker, or belonged to any other religious persuasion that prevented him from taking it. It should not be overlooked that the whole land was interested in obtaining evidence, and, instead of rejecting it, every person

should be stigmatised who, under any pretext, withheld it.

The *Chairman* declared that the subject was most interesting, and was one on which he entertained a strong opinion. He objected to the present practice, and believed that in many cases an oath in a court of justice was used as a mock sanction that did a great deal of mischief and no good.

Mr. *Daniel*, Q. C., objected to the present rule in operation. It was suicidal in reference to the object for which it was established, and was not a sound one.

Mr. *Best* was strongly inclined to believe that oaths ought not to be abolished; but, on the other hand, the refusal to take them should not be urged as a ground of incompetence against a witness.

Mr. *Charles Clarke* agreed that oaths should not be abolished; but when persons declined to take oaths from religious motives, or because they held them to be of no value, they ought not to refuse their testimony when that testimony was required as a matter of necessity. They should encourage the principle of a man telling the truth, and afterwards test his evidence, but should not reject it.

Mr. *H. S. Reilly* said it was important that the law should be adapted to the present state of society. There were persons who would be inclined to say, "I have no definite opinion; I am a sceptic, and suspend my judgment." Such a man was engaged in the investigation of the subject, but if during the course of such investigation his testimony was required, was his evidence to be rejected? Others might think that it was not given to them to determine in favour of atheism or deism. Those persons called themselves secularists, and they thought it was beyond their province to determine on such a point.

Mr. *A. Lawrence* said it was a scandalous state of things when a criminal assault could be made on a woman with impunity, because her testimony was rejected on the ground that she had no religious belief, or was in a state of doubt.

Mr. *Joshua Williams* said the truth should be obtained from every source, unless the accepting of it involved greater evils than the loss of the truth itself. Therefore the evidence of the persons of whom they had been speaking should be received.

Mr. *Hake* asked if any gentleman in that room would require a jury to disbelieve a witness if there was nothing to be alleged against him except his unbelief.

The Rev. Mr. *Maurice* replied, and a vote of thanks was passed to him on the motion of Mr. *Kerr*, seconded by Mr. *Clarke*.

The proceedings closed with a vote of thanks to the *Chairman*.

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An important decision in respect to church rates was given in the Court of Queen's Bench on Wednesday. A Mr. Pedlar and others were summoned before the justices at Wellington, Somersetshire, for non-payment of church rates. Mr. Bennett, of Serjeants'-inn, appeared for them, and took objections to the validity of the rate. The justices, after consulting with their clerk, decided that the objections were bona fide, and dismissed the summons, thus leaving the churchwardens to look to the Ecclesiastical Courts for a remedy. Later, another summons was issued, and again the same objections were raised. The justices this time carried matters with a high hand. Declining to consult with their clerk, they overruled the objections, and made an order for the payment of the rate. Application was then made to the Court of Queen's Bench for a rule to quash the order, and this came on for argument on Wednesday. Without calling upon the opponents of the rate to reply to the arguments which had been raised in its support, the Court held that the magistrates' order must be quashed.

DEATH OF LORD MANNERS.—We have to announce the death of Lord Manners, which occurred at Hastings on Monday. His Lordship had long been in a precarious state of health, his disease being consumption. John Henry Manners-Sutton, second Baron of Foston, Lincolnshire, was eldest son of a distinguished father, the Right Hon. Thomas Manners-Sutton, who became Solicitor-General in 1805, and shortly afterwards one of the Barons of the Exchequer, and in 1807 was appointed Lord Chancellor of Ireland, when he was raised to the peerage as Baron Manners. He was born in 1818.

M. BERRYER.—The *Courrier du Pas de Calais* states, that as soon as it became known at Calais that M. Berryer was to arrive on Friday by the steamer from England, the barristers of that town, and many of the principal inhabitants, determined to pay their respects to him. A great number accordingly assembled on the quay, and greeted him with loud cheers on landing. M. Berryer expressed himself highly gratified with this manifestation, and before leaving the station, he received all the members of the Calais bar, and thanked them for the honour they had done him.

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THE JURIST.

LONDON, NOVEMBER 26, 1864.

It has been frequently asserted that the judges of the common-law courts are too few in number for the efficient performance of the work of those courts. It would seem that the learned judges are themselves decidedly convinced of the truth of this assertion, and lose no opportunity of intimating their convictions to all concerned in their proceedings. Thus, the sittings of the full court in the Divorce Court, which ought by statute (23 & 24 Vict. c. 144) to be held on the seventh and succeeding days of every term, were omitted in this Michaelmas Term, because it was said to be impossible to spare from the other courts the number of judges required to constitute a full court. Again: the sittings in error after term are stinted to seven days, because a larger space of time would interfere with other more pressing and important demands on the time of the members of the Court of Appeal. As there are nineteen appeals from the Queen's Bench, four from the Common Pleas, and five from the Exchequer, it is obvious that these cases are expected to be got through, we will not say heard, with the velocity of more than five in a day of five hours; and it is equally obvious that such a hurried and cursory investigation of what may fairly be assumed to be intricate and important points of law cannot, and will not, be satisfactory either to the profession or the parties concerned. And we may observe, that the dissatisfaction, rather loudly expressed, at a somewhat similarly perfunctory hearing of appeals last year, when the cases were broken down, rather than dismissed or considered, would (we should have thought) have prevented a repetition of the experiment. Again: within these last few days, the judges of the Queen's Bench have assured Sir George Grey that it is utterly impracticable to hold a civil winter assize at Manchester, however much the numerous population of that important city may have anticipated and desired it, because all the learned judges will at that period of the year be fully occupied elsewhere. It is true, that it was hinted that such an assize was not needed, and that even at Liverpool a winter assize was against the wishes of the profession; but it seems clear that both Liverpool and Manchester demanded such an assize, and that a paucity of judges was the only real obstacle to its not being accorded to both.

The arrears at Nisi Prius in London, particularly in the Queen's Bench and Common Pleas, are brought forward in further confirmation of the proposition, that work at the common law is too much for the existing judges. Nor should it be forgotten that these arrears are regarded by the public with much deeper concern, if not murmuring, than by the profession, although to the latter they are in the long run injurious. Arrears involve necessarily heavy additions to the expense of proceedings, and contingent failures of justice through the death or absence of parties or witnesses; and the consequence too often is the compromise or the abandonment of the clearest rights.

On the other hand, it must not be forgotten, that, at the present time, the lamented illness and absence of one judge is an exceptional cause of some extra work being thrown on his colleagues; but, even with that allowance, it may be doubted whether the common-law judges are so overburdened with work as is supposed, or whether, at any rate, a perfectly satisfactory remedy cannot be devised without resorting to the creation of any additional judges. It is certain, that during the term that has just passed, only the Court of Queen's Bench has had its time fully occupied; whilst the Common Pleas has experienced some, and the Exchequer great, difficulty in finding occupation. A return of the hours of sitting of the last-named court, and the work done at those sittings, might throw a new light on the subject. It might appear that, if no other alteration could be made, a transfer of business from one court to another might effect a great relief. We believe, however, that this would be a partial and inconclusive remedy. The truth is, as we believe, that the work of the judges has not increased, but that its character has changed; and that the true remedy for their complaints is an alteration in the mode of transacting legal business. Court business has diminished, whilst Nisi Prius business, chamber business, appeal business, and criminal business have greatly increased; and yet the manner of transacting these, and the time allowed for their transaction, has remained unaltered for the last thirty years. The lawyers do not march with the times. It may be quite true, that the judges of themselves cannot remedy this, and that it lies with the Legislature, who, by stat. 11 Geo. 4 & 1 Will. 4, c. 70, originally fixed the constitution of the courts, the length of the terms, and of the sittings after terms, so to modify and alter the sittings of the various courts in error, in banc, at nisi prius, and in chambers, as to insure a speedier and more satisfactory dispatch of business; but it must be added, that it is most unlikely that any suggestion of this sort, on the part of the judicial body, would pass unheeded for a single session.

We will assume, that they have really not had leisure to draw up any formal suggestion or scheme of reform of any kind—not even in those after-dinner movements, which used to be ingrossed with “cur. adv. vult.” pursuits (now unhappily so uncommon), and will offer some views of our own on the matter, at the risk of being thought guilty of some presumption.

We consider that all the business of the three courts at chambers should be discharged by one judge, sitting there the whole of the day; each judge taking this duty in weekly rotation.

It is also right that there should be constant, if not daily, sittings at Nisi Prius; and here, again, it would suffice, if one judge tried the cases for all the three courts; whilst this duty might be taken in monthly rotation. Special as well as common juries should be in attendance, if required, and thus a fruitful source of delay and injustice would be cut off. There should be no impediment thrown in the way of the trial of country causes in London, or there should be four

country assizes a year; but we believe the former course would be most satisfactory, both for suitors and the profession. The existing terms should be shortened in duration, and there should be a fourth term in July.

The shortening of the terms would afford longer time for the hearing of appeals, and also (if required) for trials at *Nisi Prius*; though it is apprehended, that after the present remanets were cleared away, the proposed constant sittings at *Nisi Prius* would effectually prevent any further accumulation of arrears. Moreover, by the proposed changes, much more time and leisure would be obtained for the due performance, by a competent number of judges, of their ordinary criminal business, as well as their appellate duties in the Divorce Court, the Court of Criminal Appeal, and the House of Lords. If the above changes cannot be effected without the dissolution of one of the courts, and the absorption of its members and staff into the remaining courts, it is believed, that even that blow would be endured by the profession and the public.

LAW REPORTING.

[WE have received for publication the following paper by one of the members of the committee appointed at the meeting of the Bar, held on Dec. 2, 1863.]

The opinions brought to the notice of the committee by its members or correspondents, tended to some one of the four following conclusions:—

1. That the existing practice should not be interfered with.

2. That arrangements should be made for providing, with or without the co-operation of the parties, solicitors, counsel, and judges, or some of them, a printed official record of every decision in the superior courts, with the facts and reasons in which it proceeds.

3. That a new series of reports in all the courts should be established, under the management of a council duly appointed (by the Inns of Court or otherwise), *without* the privilege of exclusive citation.

4. That such a series should be established, *with* the privilege of exclusive citation.

There was, further, a difference of opinion among those who desired a new series of reports under control, as to the constitution of the council of management—whether it should be appointed by the benchers of the Inns of Court, as representing the bar, or by the judges or the Lord Chancellor.

I believe that a majority of the committee, and a majority of those lawyers who sent suggestions to the committee, inclined to the last of the four conclusions stated above, and that the committee would have adopted that conclusion, if a majority of them had not despaired of obtaining the privilege of exclusive citation. But, as I believe also, that of those lawyers who have given any serious attention to the subject, a majority disapprove of the scheme recommended by the committee, and think, with me, that it would lead to nothing but an aggravation of the existing evils. I am encouraged to reproduce, for the consideration of the profession at large, some arguments which were submitted to the committee in favour of the establishment of a series of reports with the privilege of exclusive citation.

The choice between those schemes which are designed to limit the number of citable cases more strictly than is now done, and those which would increase them, even to the extent of recording every

judicial decision, seems to depend mainly upon considerations of degree and convenience.

Theoretically, every decision is a binding declaration of the law until it has been overruled, but, in fact, a few only are preserved, and the great majority are forgotten. A record of all the decisions of the superior courts would be useless for direct reference, and more than nine-tenths of it would be absolute waste paper.

How far the labours of the selectors could be lightened, or made more efficient, by means of official records, is a question of detail. They should have ready access to the written judgments and the papers in the cause; but whatever is not recorded for some other purpose should be noted by the reporter. If he relied on the notes of a professional short-hand writer, he would degenerate into a compiler.

A selection being confessedly necessary, should the citation of cases excluded from it be allowed? At present this may be done, although, as a rule, unpublished cases are irrecoverably lost; and where official records are kept (as in the registrar's book in Chancery, and the journals and papers of the courts of ultimate appeal), they are very seldom searched for the discovery of precedents, but only (and that seldom) to correct or supplement a report or note otherwise obtained.

The loss of a judicial precedent merely leaves the decided point where it previously stood; and no case of importance is likely to be lost under any system of reporting which the profession would tolerate. Provision might be made, that any decision of value which did not appear in due course might, upon sufficient authentication, be subsequently published in the authorised reports.

But the inconvenience to lawyers in advising or preparing for argument would be great, if unreported cases could be hunted out from the bulk of original records, and cited for a particular occasion; and the law would gain nothing in certainty by such a practice.

The habit of relying on parallel cases, rather than on the power to apply general principles, tends to weaken the legal judgment, and to impair the scientific character, and with it the certainty, of the law. Our reporters do not see, or fail to act upon, this truth, and persevere in reporting case after case of the application of the same settled rule of law, with as much profusion as if they were decisions moulding some new act of Parliament into shape, forgetting the essential distinction between a legal principle which is already part of the law, and an enactment not yet assimilated. The result is an annual burden of reports, far too unwieldy for systematic study, or even for exhaustive reference in practice, so that opinions are very often given, and cases are not unfrequently decided, upon an insufficient consideration of the authorities.

The proposal to record every decision for the purpose of citation, is founded on a mistaken or strained interpretation of the maxim stated above. The maxim is sound, but the reason on which it rests limits its application. Judges are required to follow precedent, in order that the law may be, as far as is possible, certain and known. A decision inconsistent with a prior known decision is a grievance, because it unsettles the law, and disappoints just expectations. But a precedent, not generally known or easily accessible, is practically non-existent, and no harm is involved in its inconsistency with a subsequent decision. Decisions are important as precedents only in proportion to their notoriety, and it is a mere superstition to attribute any value to those which are not published in such a manner as to be within the reach of ordinary professional research. But if all the decisions in all

the courts were recorded, the records would, by reason of their bulk, be practically inaccessible and unknown. The useful precedents must be selected, either by volunteers, as at present, or under authority; and if any decision not included in the selection were followed as a precedent, the losing party might justly complain that his cause was not decided upon argument and consideration of known principles of law, but was concluded by a rule not previously promulgated. If it is said, that many important and valuable decisions never find their way into the regular reports, it must be answered, that an unknown decision cannot be valuable or important. One case known to the profession at large is more valuable than a dozen cases known only to a few. If the question involved in such a fossil precedent is doubtful, it is better for the science of the law that it should be decided, after free argument, in harmony with the existing state of society and of professional opinion, than that judgment should be given in accordance with a decision which has never influenced either practice or opinion. If the question is not doubtful, no precedent is needed.

These considerations involve a condemnation of the practice of receiving manuscript notes, and extracts from official records of decisions. Even the correction of an error in a published report, after it has been generally received and acted upon, is objectionable. If the law, as it appears by the report, is evidently unsound, it should be overruled on that ground; if it is only doubtful, to correct the precedent is to incur the certain evil of change, without any considerable assurance of amendment.

The recommendation of the late committee is, in substance, though not in terms, that the regular reporters, or a majority of them, with others, shall combine and produce either a single or a twofold series of reports, so excellent in quality, so recommended by the prestige of a council of management appointed by the Inns of Court, and so well supported by a numerous subscription list, and, if possible, also by a Government subsidy, as to drive all competitors out of the field. It is unlikely that such a combination would be effected voluntarily, and the scheme could not easily be brought into work if there were a single dissident among the regular reporters.

If such a series were commenced, it would probably only add another to those which exist, and, at best, could not prosper, except on the condition of copying the defects of the others, which would strive more desperately than ever to deserve success by reporting everything. As competitors, both parties would use the weapons of competition. The probability, nay, certainty, of a powerful and able opposition must be kept in view. Would it be possible to combine the regular reports and the *Law Journal* in one interest? If not, success is impossible. No voluntary combination would submit to such a despotic management as is necessary to secure excellence. If the reputation of reports depended on the judgment of the best lawyers, a series of judiciously selected cases might succeed. But the majority of the 3000 or 4000 buyers, to whom the projectors must look for a market, and whose tastes they must consult if they are to depend upon commercial success, estimate the merits of a reporter by the number and length of his reports, and no lawyer in the minority could safely neglect any reported case merely because it ought not to have been reported.

Little amendment is to be expected from any alteration which leaves reporting open to competition—a word suggesting principles of social economy and liberty that are foreign to this inquiry, which is not how to secure the most abundant and the cheapest

supply of a commodity, but how to obtain one single article in the best and most convenient form. One good series of reports being given, a second would be a nuisance.

The profession cannot be expected to acquiesce in the continuance and growth of an evil system out of regard for the very slender pecuniary interests of the authors of the mischief.

It is not proposed to abridge the right of any person to report what cases he pleases, but only to regulate the citation of reports, and to protect the profession and the judges from an overwhelming accumulation of authorities.

The judges, though theoretically they are bound to consider and allow due weight to every precedent, must clearly have some discretion as to the sources of their information; and the practice of receiving every report which purports to have been made by a barrister is of very modern origin, and has been disapproved of by more than one judge. It certainly is not beyond the power of the judges to sanction what they may consider a sufficient provision for reporting all decisions worthy of being preserved, and to reject information from any other source. But if the judges were unwilling to exercise so much authority, application might be made to Parliament. The suggestion, that under such a system important decisions might be improperly suppressed, is certainly chimerical. If the judges who decide a case have the right to require that it be reported, and if the reporters are independent of the judges, and may report what cases they think fit, there can be no danger of suppression from any wrong motive.

Exclusive citation is said to be impossible, because the Courts cannot be asked to be, or to pretend to be, ignorant of a recent and notorious decision on an important point which has not found its way into the regular reports. If the unreported decision is not to be reported, no evil would follow from the neglect of it, for there would be no conflict of authority; and if it is to be reported, the authorised reporters can be required to furnish a statement of it. But it has never been proposed that the Courts should take no notice of unreported decisions within their knowledge. All that is asked is, that they should refuse to look at unauthorised reports, the object being to abolish the nuisance of a multiplicity of reports.

I believe that a very large majority of those who have formed any opinion on the subject, desire to obtain, *by some means*, a single series of reports on which they may rely without referring to any others.

This means, a series preferable to all others, and implies a desire for the extinction of all competing reports, for that which is preferable will be bought to the exclusion of the rest.

Such a result must be brought about either by competition or by authority. If, by competition, the proprietors of the other reports will first lose their profits, then carry on for a time at a loss, and finally retire from the contest, without honour and without compensation—for they will have been vanquished in fair fight; and the reporters who are deprived of their occupation will be equally without remedy. But to proprietors and reporters who are stopped by authority, compensation may be given. The only considerable claims would be those of the proprietors and editors of the regular reports, and of the *Law Journal*, and they might, probably, be sufficiently compensated by shares in, or a charge upon, the new undertaking.

It seems, therefore, that the desire which the majority have expressed will be carried into effect with more fairness to existing interests if it is done under authority.

With a view to leave room for what have been called

the ephemeral reports, it has been suggested that there may be a permanent series, from which alone cases should be cited after the lapse of a year from the decision. But this would involve either the insertion in the permanent series of every case included in any of the ephemeral reports, or the absurdity of a case being an authority for a few months and no longer, and would not, on either condition, be an improvement on the existing practice. A weekly series of notes prepared by the authorised reporters, and containing no cases that are not intended to be fully reported, is desirable.

I cannot, therefore, avoid the conclusion, that if anything is to be done it must be done under authority—establishing a proper system—forbidding the citation of unauthorised reports—and providing a fair compensation for injury to existing interests. The profits of a privileged series of reports would be amply sufficient for that purpose.

On the suggestion that judges and counsel should take a part in reporting, I will only remark, that reporting is a delicate and difficult art, requiring a special training, and the devotion of much time, attention, and research.

The existing system has been defended, because it provides occupation and training for young lawyers. No one who is acquainted with the practice of reporting, will rate that benefit very highly; and at best, the number who can enjoy it is insignificant. It is scarcely necessary to refer to the suggestion, that a large body of independent reporters constitutes a check upon the judges. So far as the judges require a check, they have it in the scrutiny of the suitors, solicitors, and counsel engaged in litigation, and in the reports and comments of the daily press. If a further check is needed, it is more likely to be found in a select, learned, and critical body of reporters than in the existing guerrilla.

The objects to be sought are—

A single series of reports, beyond which no one need or can look for authorities.

Settled rules for reporting, and the suppression of superfluous cases and superfluous details.

Regular and prompt publication.

Facility of reference.

The incidental advantages will be a large saving of book room, and of time and labour in reading and consulting the reports.

SUGGESTIONS.

Establish a council for reporting, consisting of, say, seven members, acting gratuitously. One appointed by the Judicial Committee of the Privy Council, one by a majority of the common-law judges, one by a majority of the equity judges, two by the benchers of the Inns of Court, and two by the Incorporated Law Society. Each member to be appointed in the first instance for ten years, and then to be re-eligible only from year to year.

The council to appoint (and for cause stated to dismiss) the reporting editors and reporters, to regulate details, and to manage financial matters.

One reporting editor with a salary of £—, and one reporter with a salary of £—, to be attached to each court, with liberty to practise.

The reporting editor to be bound to be present in court a certain number of days in each term or session; and the reporter to be present, in person or by deputy, whenever the editor does not attend, subject to such exceptions as the council shall allow. Fine for non-attendance. The reporter may appoint a deputy, or, if the council thinks fit, two deputies, to be approved of by the council; and the reporter may,

without cause assigned, dismiss his deputy. Salary to deputy £—. (The arrangement as to deputies seems to be the best way of securing a succession of tried and practised reporters).

Periodical returns of the actual attendances of the reporters to be made to the council, and to be open to inspection.

Convenient sittings to be provided for the reporters. Judge's clerk to be bound to furnish copy of written judgment on the day of delivery. Office copies of papers to be supplied gratis.

A short note of every case intended to be fully reported to be published within two weeks after the decision. A full report of the same case to be published within two months. Fine for delay. The remuneration of the reporters to be subject to taxation (as suggested by Mr. Hare). Notes to be published weekly; full reports monthly. No case inserted in the notes to be omitted from the full reports. Reporters to furnish certificate of any unreported case of which they have notes, on the request of a judge or Queen's counsel.

Reports to be fairly copied for the printer, and the full reports to be revised in MS. by the reporting editor, who is also to revise and be answerable for the proof sheets. The name of the actual reporter of each case to be appended to the report.

Two of the reporting editors to be appointed general editors, with an additional salary, to supervise the editing of the reports, and assist the council in securing the observance of general rules, and to prepare a digest of the reports for publication in April and October. The contents of the April publication to be repeated in that of the following October.

An outline of heads and subdivisions for a complete digest of every branch of law and practice, to be prepared by the editors, and printed for the use of the reporters and the profession, with blanks under each sub-head.

The cases in the reports to be numbered consecutively in each year. A case could then be noted in the outline digest by its number and the year of the century. As the preparation of the outline digest would be a work of considerable labour, it should be the subject of a special payment, and it would be well to circulate a proof for suggestions and corrections.

The reporters to prefix to each case a note of the point or distinct notes of the points for which it is reported, as they should appear in the digest, with a reference to the appropriate head and sub-head, and references to leading cases for noting up. (References to treatises would give an undue advantage to those selected, and, for the interests of the profession, as well as in fairness to text-writers, actual and possible, should not be allowed).

Every case cited in the argument should be cited in the report, but the reporters should adopt some means of distinguishing those they consider to be in point from the rest. The facts and the arguments of counsel should be stated briefly.

The subscription to the reports and digest should be a fixed sum, irrespective of quantity; there would then be no temptation to unnecessary amplification.

The reports should be printed so that the cases of each year may be classified according to the jurisdictions of the several courts, and, if required, separately bound; but I think the example of the *Law Journal* should be followed in not selling the cases separately, except, perhaps, a selection of cases for magistrates.

The copyright of the notes, reports, and digest should be vested in the council. If a subscription for the weekly notes alone is allowed, it should bear a high proportion to that for the full reports, and efficient protection of the copyright would be necessary.

The revision of their judgments by the judges, when they are willing to undertake it, seems to be desirable. On the other hand, the Court should have no power to influence the selection of the cases to be reported, except, perhaps, the right to direct that any particular case shall be reported.

The Courts should resolve, or be required, not to listen to any other reports.

To the estimates of financial results already before the profession, I will only add the remark, that a privileged series of reports, even at a high price, would certainly have a very large circulation, while the amount of the matter to be printed would be probably less than one-half of the contents of the current series of regular reports. But the existence of the *Law Journal* as a valuable property, although it contains, in addition to the reports, the bankruptcy lists and the statutes, and is published at an annual subscription of three guineas, is sufficient to shew that the scheme now proposed would be self-supporting.

The best arrangements for printing and publication might be ascertained, after the settlement of everything else, by inviting suggestions from the law publishers.

GEORGE SWEET.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—Although acknowledging that all students in one branch of the legal Profession ought to be grateful for, and do duly appreciate the efforts of, your correspondent Mr. W. J. Fraser, for the formation of law classes in connexion with the Law Society, I would suggest that a greater benefit would accrue if a society of articulated clerks, such as that to which I have the honour to be connected, were to make classes a part of their system of education. By such means a vitality would be generated which could never be attained in any other way. Those most directly concerned would take a greater interest in a movement which had had its origin from among themselves, and which would thus be maintained and managed by members of that particular class to which they belonged.

The course which *might* be pursued would be the reading of a series of papers on some branch of the law, by a regular succession of chosen members, who would, by benefiting others, benefit themselves. Each paper might occupy half-an-hour, after which questions and a friendly discussion might ensue.

The future generation of solicitors would thus have an opportunity of ascertaining the theory of the law by classes, at least equal to that which they now have of discovering the practice of the law by a "lustre" of pastime or drudgery in an attorney's office.

Should this course be pursued, I should be happy to subscribe a guinea towards the small expenses which would be incurred.

Your obedient servant,

WYNNE E. BAXTER,

Hon. Sec. of the Articled Clerks' Debating Society.
Bedford Park, Croydon, Nov. 21, 1864.

THE DISCIPLINE OF THE BAR—The Benchers of the Middle Temple, who some time ago decided that they would not disbar Mr. William Digby Seymour, and gave very strange reasons for so deciding, may take a lesson from the terrific sentence lately fulminated against Mr. Charles Rann Kennedy by their brethren of the Inner Temple. That unhappy gentleman is, we understand, "suspended for two years from attendance in the hall, library, and gardens" of that house.

WINTER ASSIZES.

Before BRAMWELL, B.

Warwickshire—Monday, Dec. 5, at Warwick.
Gloucestershire—Thursday, Dec. 8, at Gloucester.
Glamorganshire—Monday, Dec. 12, at Cardiff.
Somersetshire—Thursday, Dec. 15, at Taunton.
Buckinghamshire—Tuesday, Dec. 20, at Aylesbury.

Before CHANNELL, B.

Southampton—Thursday, Dec. 1, at the Castle of Winchester.
Hertfordshire—Thursday, Dec. 8, at Hertford.
Essex—Monday, Dec. 12, at Chelmsford.
Kent—Thursday, Dec. 15, at Maidstone.
Sussex—Wednesday, Dec. 21, at Lewes.

Before BYLES, J.

Staffordshire—Thursday, Dec. 1, at Stafford.
Worcestershire—Monday, Dec. 12, at Worcester.
Oxfordshire—Saturday, Dec. 17, at Oxford.
Berkshire—Wednesday, Dec. 21, at Reading.

Before MELLOR, J.*

Leicestershire—Saturday, Dec. 8, at the Castle of Leicester.
Cheshire—Wednesday, Dec. 7, at Chester.

Before KEATING, J.

Durham—Saturday, Dec. 3, at Durham.
North and East Riding Division of Yorkshire—Thursday, Dec. 8, at the Castle of York.
City of York—Thursday, Dec. 8, at the Guildhall of the City of York.
West Riding of York—Tuesday, Dec. 13, at Leeds.

Before BLACKBURN, J.

Lancashire—Saturday, Dec. 3, at Manchester.
Lancashire—Saturday, Dec. 10, at Liverpool.

CALLS TO THE BAR.

THE undermentioned gentlemen have been called to the Bar:—

LINCOLN'S INN.—William Henry Campbell, Esq., B.A.; John Hennell, Esq., B.A.; Robert Melville, Esq., M.A.; Lawford Yate Lee, Esq., M.A.; John Moulton, Esq., B.A.; Roland Bowdler Vaughan Williams, Esq., M.A.; John Armstrong, Esq.; William Arthur Hicks, Esq., B.A.; Edward George Clarke Esq.; Richard Ward, Esq., M.A.; John Gray Warner, Esq., LL.B.; George Tuthill Barrett, Esq., M.A.; George Winter Bomford, Esq.; Horace Watson, Esq.; Laurence Craven, Esq., M.A.; John Edward Jenkins, Esq.; and George Cardale Esq., B.A.

MIDDLE TEMPLE.—Charles Frederick Farran, Esq., B.A. (holder of the Studentship awarded by the Council of Legal Education, Michaelmas Term, 1864); Maurice Foster Farrell, Esq., B.A. (holder of the Exhibition awarded by the Council of Legal Education, Michaelmas Term, 1864; and Certificate of Honour, first class, awarded in Trinity Term, 1864); Thomas William Snagg, Esq., M.A.; Richard Francis Eaton Charles Edeveain, Esq.; Frederick James Barnard, Esq.; Edward Masson Hunt, Esq.; William Arthur Warner Sleigh, Esq.; Richard Harris, Esq.; Frederick D'Olbart Bullock, Esq., LL.B.; John Burns Bryson, Esq.; Robert Caird, Esq.; Alexander Kennedy Isbister, Esq., M.A.; William Patrick Mac Donald, Esq.; and James Kirton, Esq.

INNER TEMPLE.—Jones Quain Pigot, Esq., B.A.; Richard Blake Steele, Esq., B.A.; Sheridan Knowles

* Mr. Justice Mellor will join Mr. Justice Blackburn at Liverpool.

Mackay, Esq.; Edward Ross Divett, Esq., M.A.; Charles Birch, Esq., B.A.; Edmond Arthur Ram, Esq.; Aimable Emile Lanougarède Bazire, Esq.; Thomas Adair Masey, Esq.; John Heaton Cadman, Esq., B.A.; James Lowther, Esq., B.A.; John Charles Edmondson Coleman, Esq.; Henry Reginald Courtenay, Esq., B.A.; Charles Howard, Esq., M.A.; Charles Neil, Esq.; Lovell Burchett Clarence, Esq., B.A.; John William Bacon Grey, Esq.; Robert Hornell, Esq., M.A.; John Sydney Malcolm Hastings, Esq., B.A.; Rees Edward Davies, Esq., B.A.; and Charles Gordon Kemball, Esq.

GRAY'S INN.—Daniel Abraham Hughes, Esq.; William Romilly, Esq.; and Lionel Henry Hanbury Jones, Esq.

NINETEENTH ANNUAL ISSUE.

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THE JURIST.

LONDON, DECEMBER 3, 1864.

THE majority which carried the Bar Committee's scheme at the scanty meeting of Monday last was large enough to be recognised without a division, and may fairly be taken to represent a still greater proportion of the absentees, for among the minority were many who represented nothing but their own interests. That the scheme, in its present state, is approved of by all who voted for it we do not believe; but the meeting, with perhaps a just appreciation of the inertia of the bar, preferred immediate though imperfect action, to contingent and probably long-delayed, if ever attainable, perfection. They found the committee in existence as a centre of force, and their scheme as a nebulous mass—rather chaotic—but capable, it was hoped, of being elaborated into something like a cosmos of reports by the higher influences next to be brought to bear upon it. Upon the whole, we are glad that the compromise has been made, and we congratulate Mr. Daniel, to whose energetic and conciliatory conduct of the agitation its success—if it succeed—will have been mainly due, on the progress already made; while we trust that every one who has at heart the improvement of the law and the true interests of the profession will do his best to assist in the desired reform. We should have preferred a better arrangement, but a better arrangement does not seem to be presently attainable; while, on the other hand, that which is now in prospect, so far from being final or incapable of improvement, will, if it is established, have removed the principal obstacles to further improvement. But its success is far from certain. The profession at large are not yet fully aware of the importance of immediate and energetic action, nor will they become so until the magnitude of the evil, and the rate at which it is increasing and must increase until it is stopped by a radical reform, have been again and again set before them. We were, therefore, pleased to read, in a well-written article on the subject, which appeared in the *Daily Telegraph* of Wednesday last, the following vivid and correct picture of the present state of the common law:—

"A fine legal fiction imputes to every individual a complete and accurate knowledge of the whole mass of jurisprudence, and forbids any person to escape obligations by pleading ignorance of them. We now find, not only that the maxim is not true, but that it is the exact opposite of truth. Instead of everybody knowing the law, nobody knows it. The Chancery barrister studies equity, the special pleader the mysteries of pleading, the conveyancer the intricacies of title and assurances, the criminal practitioner the penal code; but not one of these men pretends to be versed in the business of the others, or even to have a complete acquaintance with his own. How is this? The answer is, that law has developed and propagated itself with such amazing fecundity, that the most assiduous industry cannot trace all its ramifications. Its growth is prodigious, like that of the aquatic

weed which in some of our eastern counties has choked up rivers, and converted navigable streams into stagnant morasses. The manufactories of law are numerous, and their activity unwearied. First, there is the statute-book—the net result of the public labours of Parliament year after year. The volumes in which the general resolutions of the great council of the nation are annually recorded, constitute a vast and ponderous series; but even this mass is insignificant in comparison with the "judge-made law," the code of judicial decisions. We have six Chancery courts, three common-law courts, and several courts of appeal, besides other tribunals, sitting day by day during a great part of the year; and all these seats of justice contribute to swell the mighty flood of English jurisprudence. Every one of their decisions constitutes a precedent, which, so long as it is not overruled, binds courts of co-ordinate jurisdiction in analogous cases. Of course, many of the judgments contain no new principles, and are, therefore, omitted from the published legal reports. But, notwithstanding these omissions, the multitude of reported cases is far too great. Decisions which merely reaffirm settled points, and really contribute nothing to the stock of legal knowledge, are incorporated in these technical publications. Another complaint is, that as the law publishers pay the reporters according to the length of their contributions, the latter have an inevitable tendency to amplification and the insertion of impertinent matter. Nor are these the only evils. There are rival series of reports, and thus it happens that the same decision is reported several times over; and, as neither of the versions is strictly authentic, discrepancies between them occasion much trouble both to the bench and the bar. We repeat that this subject, technical though it be, is one of public interest. It is as important for us that lawyers should have good reports as that surgeons should possess good instruments. Litigation is not much less painful than surgery, and no argument is needed to prove that humanity gains by the keenness and exquisite ingenuity of the apparatus of vivisection. Moreover, the lawyers themselves, even though they are the natural enemies of the human race, deserve some little pity. They complain that their grievance is intolerable; that the tax upon their brains which the fecundity of the law imposes is greater than they can bear."

Mr. Daniel and his colleagues must, however, not only satisfy those whose support they seek of the necessity of reform, but convince them that what is proposed will be a reform—and not an aggravation of the mischief. They must come with at least all the "regular reporters" in their train, so that every subscriber to the new series may be assured that he is not subsidising "one more plague." They will thus, probably, secure all the present subscribers to the regular reports,—for though there are few who take in both the common law and the equity reports, yet the annual cost of either division of the regular reports very considerably exceeds the proposed subscription for the new series. Whether, having obtained the co-operation of the regular reporters, our reformers will be able to detach any considerable number of sub-

scribers from the *Law Journal*, is doubtful. Unless they do so, they can scarcely hope for success. If they once establish themselves upon a sound financial basis, and if the management of the reports is satisfactory, they will either extinguish their rivals by the mere force of competition, or will have a good title to ask for Legislative interference.

Correspondence.

LAW REPORTING.

TO THE EDITOR OF "THE JURIST."

SIR,—If the very slender subscription list which the reporting committee of the Bar obtained, allowed any doubt to exist on the subject, the smallness of the meeting on Monday last, and the very narrow majority by which the committee's report was carried, are sufficient to shew that the Bar is not very interested on the subject of Mr. Daniel's scheme. On the other hand, the overwhelming majority which negated the principle of "exclusive citation," proves that the Bar has no intention to lend its aid to any interference with free competition in reporting. In other words, that it has no wish to cramp or limit the existing system of irregular reports.

Putting these two conclusions together, I think we shall not be far wrong in saying, that the only object which the Bar desire, or have in meeting resolved to effect, is an amendment of the present system, or no system, of the so-called regular reports. Very many members of the Bar would gladly see the regular reports altogether extinct. But as it seems to be assumed in the present controversy (though why it should be I am at a loss to understand), that the regulars must be continued in some shape or other, would it not be better to make the avowed object of the movement accord more nearly to that which it would appear is its real end? It would go hard, no doubt, with the committee to throw over that singular and eccentric production—their report, and take up in its stead some simple and practical plan for causing the regular reports to be brought out with something like regularity, and at something approaching a reasonable price. I believe, however, that if they will only have the magnanimity to do this, some good may even yet come of the present discussion. I believe that there would then be a chance of our obtaining a complete set of the authorised reports, at a cost of about 15*l.* a year (for I put aside altogether the "estimates" of expectant tradesmen), and of our having these parts delivered regularly at intervals of two or three months. This, of course, is not so grand an idea as the committee's scheme, but I fancy it is more likely to be realised; and as the primary object of Mr. Daniel's agitation has failed, I cannot see why the Bar should not seek some benefit from it, though the benefit may not be that which the projector himself had in view.

I am, Sir, your obedient servant,

B.

LAW REPORTING.

THE adjourned meeting of the Bar, convened by the Attorney-General to consider the report of the committee appointed on the 2nd December, 1863, was held in Lincoln's Inn Hall on Monday, Nov. 28. About 250 members of the bar were present.

The chair was taken by the Attorney-General at half-past three o'clock.

Mr. Daniel, Q. C. (in the place of Mr. Amplett, Q. C., the chairman of the committee, who was prevented from attending by a domestic affliction), moved that the report of the committee, or rather the scheme recommended by them, should be adopted. In so doing, he said the great object of the scheme was to establish—if possible without external aid—one standard set of reports, prepared with such care and skill, and published at such a moderate cost, as to command the confidence and support of the profession. He would not, he said, enlarge upon the evils of the present system, which he presumed were present to the minds of all. The scheme was, he believed, calculated to afford a practical remedy to a practical evil. That was its sole scope, for the promoters of it did not pretend to be law reformers. The committee had endeavoured to ascertain upon what footing, in a commercial point of view, the scheme could be put so as to be, if possible, self-supporting. A calculation had been made of the number of copies of the regular law reports sold about forty years ago, the time of Barnewall and Cresswell's Reports, in the Queen's Bench, a period anterior to competition. They found that there were then 4000 copies of the Common Law regular Reports sold, and 2000 of the Chancery. They had taken the latter, the lower number, as the basis of calculation. He had then consulted one of the most eminent printers in London—Mr. Clowes, of Stamford-street—as to the cost of printing a "part" of the "regular reports"—about the size of one of the most expensive, Clark's Cases in the House of Lords, which cost about 12*s.* 6*d.* He found, that on a circulation of 500, the cost would be 1*s.* 10*d.*; of 1000, 1*s.* 4*d.*; of 2000, 1*s.* 2*d.*; of 3000, 11*s.* 3*d.*; of 4000, 10*s.* 4*d.*; and on a circulation of 5000, 10*s.* 4*d.* These figures seemed to him so striking, as, if true, to shew that there was a radical defect in our present system as regarded the consumers, and a radical defect as regarded the reporters. He shewed the figures to Mr. Hemming, who pointed out, that the cost of correcting the press—which was in some of the reports as great as the cost of composing—had been omitted. If this were so, he thought that the supervision of an editor, as suggested by the committee, would so far improve the manuscript as to render an allowance of one-third a sufficient margin for the cost of correction, making Mr. Clowes's 10*s.* 4*d.* into 11*d.* per copy. Then, as to the salaries of reporters, the estimate was about 10,000*l.*, the first moiety of which was to be guaranteed (if required, and if possible) out of the Suitors' Fund or the Consolidated Fund. He had no desire himself that either of these funds should be resorted to; nor did he believe that it was necessary to have such assistance, or that, if it were so, that it would be attainable. But the committee had deemed it best to include that element as part of the scheme. It would be necessary, in order to raise 10,000*l.*, to have 2000 subscribers at 5*l.*, and he believed that number to be obtainable. He had then submitted the scheme to the Messrs. Clowes upon that basis, and asked them if they thought that it was practicable. Their answer was, "We are willing to accept it, and should be surprised if any printer were to decline." It appeared, then, quite possible to have a standard set of reports at a subscription of 5*l.* There would only, he believed, be eight volumes required in a year. As there would be a proper judgment exercised in the selection of cases, there would be no temptation to report cases which were of no value; nor would there be any inducement to occupy sheet after sheet in merely copying pleadings and documents at length, instead of simply stating the material facts. There would merely be a statement of the material facts, the substance of the arguments, and the judgment. At present there were about sixty

"parts" of reports, or about twelve volumes published in the course of the year; whereas, he believed, there need be only eight. Mr. G. Sweet, a gentleman of experience, was of opinion that the reports might be reduced to one-half their present length. Mr. Hemming's estimate was one-tenth. One-half or one-third might safely be estimated. Thus, therefore, there need only be eight volumes a year. When they considered the enormous increase in the numbers of the profession, and the great extent to which the English reports were diffused over the world, he assumed that, with a subscription of five guineas a year, the scheme would be self supporting. And upon these premises, he moved that the report be adopted.

Mr. James Dickinson seconded the resolution.

Mr. W. M. Best rose to move an amendment, the omission of that part of the scheme which related to the editors. The new system would introduce all the evils of a divided responsibility; and if an editor had the power of striking out a case, or any part of a judgment, the independence of the reporters, and the trustworthiness of their reports, would be endangered, or rather destroyed, and a wide door opened for all kinds of influences. He observed a remarkable omission in the speech of the mover. At the last adjournment it had been proposed, that names of subscribers should be received as a test of the support which the scheme would receive. But as to that, a total silence had been observed. Yet that, it was manifest, lay at the basis of any calculation on the subject; and in the absence of that, all the estimates in the world were fallacious. As to the figures presented to the meeting, all he could say was, that he suspended his belief about them. He would not express any judgment on the report of the committee as a whole, but entertaining a serious objection to that part of the scheme which related to the control of editors, he moved that it be omitted.

The Hon. George Denman, Q. C. (a member of the committee), said he objected to the scheme, not upon detail, but upon principle. He thought it objectionable in point of principle, whether it failed or succeeded. Its success would depend upon securing a large number of subscribers—at least 2000; and with their help driving out of the market the existing reports which were very good. It would introduce a new set of reports, which would break the continuity of those which were now established, and thus would produce a great inconvenience. If it failed, then this expense and inconvenience would have been incurred for no useful purpose. And if it succeeded, it would establish a monopoly; and it was assumed that it would hardly succeed without. In that event it would soon become as bad as any, and thus we should lose our present reports without substituting any better, and with the great evil of establishing a virtual monopoly. And for what reason should this risk be incurred? Why was it necessary to establish this great joint-stock company of the Bar? He belonged to the Common-law bar, and most of those present were of the Chancery bar; and he believed the scheme originated at the Chancery bar, and had its principal supporters among them; and in Chancery, where the judge had to decide questions of fact as well as of law, it was obviously much more difficult to report than in the courts of law, where juries determined matters of fact, and the law was thus so completely severed from the fact. Therefore it might be, that the evils of the present system were felt more at the Chancery bar than at the Common-law bar; but his own impression was, that they were not so much felt at common law. Whatever they were, however, he did not think it would be well to adopt the proposed scheme, which, if it failed, would do a great injury, and if it succeeded,

would only establish a monopoly. In the end it must come to that; and then he apprehended that few cases would be reported, and we should lose all the benefits of competition and free trade. He had a strong impression that every case which could at all be looked upon as involving a point of law ought to be reported. He knew that it often happened that cases were not reported which, as it turned out, were of great importance, and were afterwards required. He believed that it would be most dangerous to allow to any body of persons a power of excluding or suppressing cases deciding points of law; and he foresaw great evils from the proposed scheme, whether it failed or whether it succeeded.

Mr. Osborne Morgan objected to that part of the scheme which proposed that the present regular reporters should have the option of engagement under the new system. That was, in his view, inconsistent. If the present reporters did their work well, why want a new system? If they did it so badly as to require a new system, why retain them? He rather agreed with Mr. Best as to the editors. He knew very well how easy it was to spoil a good report, and how hard it was to mend a bad one. He observed that it had not been stated how many subscribers had set their names down. He had heard that the number was hardly a tenth of the number required. He moved that the words in the twelfth article, stating that the authorised reporters shall have the first offer of the appointment in their respective courts, be expunged, and that in their place a few words be inserted, to the effect that the council may, if they think fit, make arrangements with the existing authorised reporters as to the terms on which they would be willing to discontinue their reports.

Mr. Joshua Williams (a member of the committee) moved, that "no reports can be sanctioned by this meeting which are not invested, by paramount authority, with the privilege of exclusive citation." He said he had throughout the inquiry been persuaded that the bar would have to choose between the principle of authority—involving exclusive citation—and the evils of the existing system; for, without authority and exclusive citation, the new reports must merely compete with others, and only add one more to the already numerous competitors. Now, authority could only be obtained from some paramount power. It could not be conferred by any "council" of the bar. It would be strange to leave it to a body of barristers to exercise the functions of a court of error, and decide that such and such cases should or should not be cited with authority. The authority must be derived from some power equal to, and, indeed, higher than that of the judges; and what could that be but the authority of Parliament? Parliament alone could enact that such and such reports and no others should be cited. With such authority the profession would obtain what they wanted; otherwise, they could not. There was no security in the scheme that there should be reports of all cases decided (upon questions of law) in the courts, which was very important. For that purpose, the reporter must be always in the court. But, in his view, the whole scheme would be useless without the element of absolute authority.

Mr. Thomas Webster spoke in favour of the scheme. A former meeting of the bar had condemned the existing system, and had appointed a committee, in whom they and the whole of the profession had confidence, and they would stultify themselves if they did not adopt the report of that committee. The scheme was not perfect, perhaps; every human scheme must be more or less a compromise. It was idle to deny the evils of the present system—their prolixity, their defects, their delay. The delay alone was a great evil.

One great object was to have all the cases published as soon as possible after the end of the legal year.

Mr. *Ince* doubted the figures which had been laid before them. Estimates, he said, were proverbially delusive, and, from actual experience, he was persuaded that the scheme could not succeed with less than 3000 or 4000 subscribers. How could such a subscription list be expected when the *Law Journal* already gave them all that they wanted at not more than half the proposed subscription?

Mr. *Hemming*, after some remarks, disclaiming the proposition for compensating the present reporters, moved, as a further amendment, "That the committee be requested to circulate among the bar the financial data upon which their scheme is based, the result of the appeal made for subscriptions, and other information in their possession, which, in their judgment, would assist the bar in forming an opinion of the principle and feasibility of the project."

Mr. *E. Webster* moved—"That, in the opinion of this meeting, it is expedient that the law reporting and the law reports be brought by the Government to the notice of the Legislature, with a view to their amendment." He deprecated the idea of the bar exposing itself to the imputation of being actuated by a commercial principle.

The Attorney-General now put the various amendments in their order. They were all negatived by show of hands, except Mr. *Hemming's*, upon which there was a close division; but it was lost by 111 to 126.

The original resolution for the adoption of the report was then put, and although, upon a show of hands, the numbers were at first doubtful, and there was a call for a division, yet as that call (it being nearly six o'clock) was not pressed, the show of hands was taken a second time, and then the resolution was declared to be carried.

Mr. *Daniel* then moved, "That the Attorney-General be requested, as president of this meeting, to communicate the resolution, and a copy of the report, to the Lord Chancellor, the Benchers of the several Inns of Court, the Society of Serjeants' Inn, the Council of the Incorporated Law Society, and the Society of the Chancery Bar, with a request, on behalf of the meeting, that they severally will be pleased to favour the scheme." In reply to questions, the learned gentleman said, the committee had received encouraging letters from solicitors in all parts of England, and that the number of present subscribers was something under 300. He added, that he and the committee objected to that course being pursued, because they thought that gentlemen would not be so likely to put their names down before the report was adopted.

The resolution was then agreed to, and the proceedings concluded with a vote of thanks to the Attorney-General and the committee.

PLAN FOR RECORDING JUDICIAL DECISIONS.

A Letter to the Right Hon. Lord WESTBURY, Lord High Chancellor, &c. (by permission).

MY LORD,—Judicial decisions have the force and effect of law, and yet they are not recorded or published. The following plan is proposed to remedy the anomaly:—

1. That the junior counsel for the plaintiff and defendant shall jointly prepare, and at the hearing hand to the judge, a concise statement of the facts upon which the decision must be based,

and the names of the cases upon which they respectively rely.

2. That the judge shall, after hearing the cause, alter (if necessary) this statement, so as to constitute a complete record of the case, and add thereto his own written decision, signed.
3. That this document shall be filed in Court, and be deemed "The Decree" or "Judgment" in the case, and shall be forthwith printed at the expense of the parties, and copies sold at cost price.

Your Lordship, with the advice of the Equity Judges, seems to have power to order that this shall be the practice in Courts of Equity.

Some incidental advantages would arise from requiring this joint statement from the juniors; it would

- First, tend to narrow the contested points;
- Secondly, aid the leaders at consultations;
- Thirdly, enable the judge quickly to grasp the bearing of the case he had to try;
- Fourthly, and tend to check rambling, pointless, illogical "arguments;" Whateley says, "The first step is to lay down distinctly the propositions to be proved."

The expense of printing the decree (which might, like the cheap edition of the statutes, be sold in single sheets for a limited period, and afterwards only in volumes) would be covered by half-a-guinea from each suitor, for which he would receive many advantages:—

First, the guarantee that counsel had mastered and marshalled the facts of his case, which is "more than half the battle;"

Secondly, *save the solicitor's time and you save the client's money*; the solicitor's time is now wasted in drawing up the decree, and by the disputes and references to which it constantly gives rise, the costs thus incurred are, I understand, never less than 2*l.*, and sometimes exceeds 200*l.*

Thirdly, for a bare copy of a decree, 10*s.* or 1*l.* is now payable.—(Ord. 36, r. 12).

The object of this plan is to secure the permanent record of decrees and judgments, every one of which, even though unrecorded, and entirely forgotten, has the force and effect of law, and are binding on the whole nation.—(Lord St. Leonards' Law of Property, p. iv).^o

This plan does not touch the question of law reporting; the function of the reporter is wholly different; it is his duty to select and report cases which—

First, constitute new developments of the common law;

Secondly, overrule former decisions;

Thirdly, construe acts of Parliament; or

Fourthly, determine novel points of practice.

Reports would be just as much needed if judicial decisions were printed as now; only their accuracy could then be tested.

I have the honour to be, my Lord,

Your Lordship's most obedient

humble servant,

THOMAS DE MESCHIN, LL. D.

44, Chancery-lane, Nov. 22, 1864.

^o We have not been able to find in Lord St. Leonards' work the remarkable proposition for which it has been cited.—Ed.

ANNOYANCE BY THE PASSAGE OF RAILWAY TRAINS.

THE case of *Piper v. Hammersmith Railway Company* has revived a question which has been several times discussed, but never actually decided, namely, whether railway companies are bound to pay compensation for damage arising from the vibration, noise, &c. caused by the passage of trains in the ordinary course of the traffic.

In considering this question it should be borne in mind that the legislative powers given to railway companies embrace three particulars:—

First, powers to acquire lands.

Secondly, powers to commit nuisances during the construction of the works.

Thirdly, powers to commit nuisances in the user of the works when constructed.

It is obvious that this third set of powers is equally necessary with the other two, inasmuch as the running of a locomotive in an inhabited neighbourhood would otherwise be a nuisance at common law, which might be abated or stopped by injunction.

With respect, however, to many other works of a public nature, the Legislature has not thought it necessary or fitting to give powers to use them in such a manner as to cause nuisances, and the promoters are therefore confined to such modes of user as are sanctioned by the common law.

This is well illustrated by the case of the Gas Act (10 & 11 Vict. c. 15), by the 29th section of which the promoters are expressly declared to remain liable for any nuisance committed in making or supplying the gas; and accordingly, in the well-known case of *Broadbent v. Imperial Gas Company* (7 De G., Mac., & G. 436; 7 H. L. C. 600), the defendants were restrained from allowing noxious vapours to flow over the plaintiff's market garden.

Works, however, of this class, if of any magnitude, cannot be constructed without the risk of interfering, at least for a time, with some right of way, or light, or water, amounting to a nuisance. Promoters of such undertakings always, therefore, take powers both to acquire lands and also to commit nuisances during the construction of the works.

Now, it will be found that the Lands Clauses Act, which was intended to apply not only to undertakings such as railways, but also to those of the same character as the gasworks last mentioned, provides compensation only for the exercise of the powers common to the two classes—that is to say, for the exercise of the powers to acquire land, and to commit nuisances during the construction of the permanent works, leaving the compensation to be given for injuries (if any) to be done in the user of the works, to be dealt with by the statutes giving power to commit such injuries.

Thus, in *Broadbent's case*, where the question turned only upon the 68th section of the Lands Clauses Act, the learned judges laid down the often-cited rule, that compensation is given in respect of the calculable damage caused, or to be caused, in or by the execution of the permanent works of the company authorised by statute; as, for instance, obstructing ways or injuring lights; and that every act other than the erection of the permanent, if properly done by the company, in pursuance of the statute, whatever damage it may cause, is considered sufficiently compensated for by the public benefit expected to follow, and is neither a subject of action nor compensation.

Instances, however, of the extension of the provision for compensation, where the authority is given to commit subsequent nuisances, will readily be found. For

example, in the Waterworks Act (10 & 11 Vict. c. 17), where, it being contemplated that the promoters will commit fresh nuisances *from time to time*, it is provided that compensation shall be paid (sects. 6 and 12) for lands or streams taken or used, or injuriously affected, by the construction or maintenance of the works, or otherwise by the execution of the powers thereby conferred.

So, also, in the Railway Clauses Act (8 & 9 Vict. c. 20) the same principle is laid down with sufficient clearness. The section which gives the general power to use the line is the 16th, whereby it is enacted, that the company may do all acts necessary for making, maintaining, altering or repairing, or using the railway; and then immediately follows the clause, "Provided always, that in the exercise of the powers by this or the special act granted, the company shall do as little damage as can be, and shall make full satisfaction in manner herein, and in the special act, and any act incorporated therewith, provided to all parties interested, for all damage by them sustained by reason of the exercise of such powers," including, of course, damage done in the exercise of the power to use the line.

The sum of the whole matter, therefore, seems to be, that the vibration caused by the passage of a train would be a legal nuisance if it were not authorised by statute; but the Legislature, in giving the authority, has provided, in the same sentence, that compensation shall be paid for the exercise of it; thus bringing the law of railway companies into harmony with the principle of natural justice, which requires, that when a right of action is taken away by statute, the party deprived should receive an equivalent for it.

It would be extending this article to an unreasonable length to examine the authorities in detail; suffice it to say, that *The London and North-western Railway Company v. Bradley* (3 Mac. & G. 336) leaves the question entirely open. *Penny v. The South-eastern Railway Company* (7 El. & Bl. 660) was decided on other grounds, so that the observations which fell from some of the learned judges on this point were merely dicta, whilst *Croft v. The London and North-western Railway Company* (3 B. & S. 436) appears to be in favour of the view here contended for.

G. V. Y.

Lincoln's Inn.

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

MICHAELMAS TERM, 1864.

INTERMEDIATE EXAMINATION.

THE Examiners reported that the following gentlemen, whose names are arranged in alphabetical order, have passed the intermediate examination with distinction:—

Frederick Huxley, aged seventeen, articled to Mr. Thomas Lister Farrar, of Manchester.

Charles Henry Owen, aged twenty-three, articled to Mr. John Richardson, of Manchester.

The number of candidates examined in this term was 145; of these, 142 were passed, and 3 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

FINAL EXAMINATION.

AT the examination of candidates for admission on the roll of attorneys and solicitors of the Superior Courts, the Examiners recommended the following

gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

I.

1. James Philip Dodd, aged twenty-one, who served his clerkship to Messrs. Lietch & Kewney, of North Shields.

2. John Gilbert Bradbury, aged twenty-one, who served his clerkship to Messrs. Tyndall, Johnson, & Tyndall, of Birmingham.

3. Lewis Charles Sayles, aged twenty-two, who served his clerkship to Messrs. Bromehead & Hebb, of Lincoln, and Messrs. Gregory & Rowcliffes, of London.

II.

4. Horace Philbrick, aged twenty-one, who served his clerkship to Mr. Frederick Blomfield Philbrick, of Colchester, and Messrs Rixon & Son, of London.

5. Frank Rowley Parker, aged twenty-two, who served his clerkship to Messrs. Sharpe & Parker, of London; Mr. Maskell William Peace, of Wigan; and Mr. Henry Rogers, of Stourbridge.

6. Frederick George Fitch, aged twenty-one, who served his clerkship to Messrs. Digby & Sharp, of London.

7. John Booth, aged twenty-three, who served his clerkship to Mr. Daniel Stephen Sutton, of Burslem, and Mr. William Compton Smith, of London.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—

To Mr. Dodd, the prize of the Honourable Society of Clifford's Inn.

To Mr. Bradbury, the prize of the Honourable Society of Clement's Inn.

To Mr. Sayles, one of the prizes of the Incorporated Law Society.

To Mr. Philbrick, one of the prizes of the Incorporated Law Society.

To Mr. Parker, one of the prizes of the Incorporated Law Society.

To Mr. Fitch, one of the prizes of the Incorporated Law Society.

To Mr. Booth, one of the prizes of the Incorporated Law Society.

The Examiners have also certified that the following candidates, under the age of twenty-six, whose names are placed in alphabetical order, passed examinations which entitle them to commendation:—

Abraham Baker, aged twenty-two, who served his clerkship to Mr. Samuel Wilkinson, jun., of Walsall, and Messrs. Bower, Son, & Cotton, of London.

Herbert Barnes, aged twenty-two, who served his clerkship to Messrs. Dawes & Sons, of London.

Robert Burra, jun., aged twenty-three, who served his clerkship to Messrs. Broderips & Wilde, of London.

William Edward Cave, aged twenty-two, who served his clerkship to Messrs. Sharp & Parker, of London.

James Smith Hepburn, aged twenty-two, who served his clerkship to Mr. Joseph Gutteridge Hepburn, of London, and Messrs Bockett, Son, & Barton, of London.

Thomas Nowell, aged twenty-four, who served his clerkship to Mr. Charles Hall, of Accrington.

Thomas Howard Stanley, aged twenty-one, who served his clerkship to Mr. Henry Jackson, of West Bromwich, and Mr. Joseph Needham, of London.

Leonard Tatham, aged twenty-two, who served his clerkship to Mr. George Remington, of Ulverston; Messrs. Loftus & Young, of London; and Messrs. Loftus, Vizard, Crowder, & Anstie, of London.

The Council have accordingly awarded them certificates of merit.

The number of candidates examined in this term was 136; of these 121 were passed, and 15 postponed.

By order of the Council,

E. W. WILLIAMSON, Secretary.

Law Society's Hall, Chancery-lane,
London, Nov. 24, 1864.

Court Papers.

EQUITY SITTINGS, AFTER MICHAELMAS TERM, 1864.

Before the LORD CHANCELLOR.

At Lincoln's Inn.

Friday	Dec. 2	{ First Seal.—Appeal Motions and Appeals.
Saturday	3	{ Petitions, Appeals in Bankruptcy, and Appeals.
Monday	5	{ Appeals.
Tuesday	6	{ Appeals.
Wednesday	7	{ Appeals in Bankruptcy and Appeals.
Thursday	8	{ Second Seal.—Appeal Motions and Appeals.
Friday	9	{ Appeals.
Saturday	10	{ Appeals in Bankruptcy and Appeals.
Monday	12	{ Appeals.
Tuesday	13	{ Appeals.
Wednesday	14	{ Appeals in Bankruptcy and Appeals.
Thursday	15	{ Third Seal.—Appeal Motions and Appeals.
Friday	16	{ Appeals.
Saturday	17	{ Appeals in Bankruptcy and Appeals.
Monday	19	{ Appeals.
Tuesday	20	{ Petitions and Appeals.
Wednesday	21	{ Fourth Seal.—Appeal Motions, Appeals in Bankruptcy, and Appeals.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Friday	Dec. 2	{ First Seal.—Appeal Motions and Appeals.
Saturday	3	{ Appeals.
Monday	5	{ Appeals.
Tuesday	6	{ Appeals.
Wednesday	7	{ Appeals.
Thursday	8	{ Second Seal.—Appeal Motions and Appeals.
Friday	9	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	10	{ Appeals.
Monday	12	{ Appeals.
Tuesday	13	{ Appeals.
Wednesday	14	{ Appeals.
Thursday	15	{ Third Seal.—Appeal Motions and Appeals.
Friday	16	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	17	{ Appeals.
Monday	19	{ Appeals.
Tuesday	20	{ Appeals.
Wednesday	21	{ Fourth Seal.—Appeal Motions and Appeals.

Notice.—Such days as their Lordships shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Chancery-lane.

Friday	Dec. 2	{ First Seal.—Motions and General Paper.
Saturday	3	{ Petitions, Short Causes, Adjourned Summons, and General Paper.

Monday.....	5	} General Paper.
Tuesday	6	
Wednesday	7	
Thursday	8	} Second Seal.—Motions and General Paper.
Friday	9	
Saturday	10	} Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	12	
Tuesday	13	} General Paper.
Wednesday	14	
Thursday	15	} Third Seal.—Motions and General Paper.
Friday	16	
Saturday	17	} Petitions, Short Causes, Adjourned Summonses, and General Paper.
Monday.....	19	
Tuesday.....	20	} General Paper.
Wednesday	21	
		} Fourth Seal.—Motions and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Lincoln's Inn.

Friday..... Dec. 2	} First Seal.—Motions, Adjourned Summonses, and General Paper.
Saturday	
Monday.....	} Petitions, Short Causes, Adjourned Summonses, and General Paper.
Tuesday.....	
Wednesday	} General Paper.
Thursday	
Friday	} Second Seal.—Motions, Adjourned Summonses, and General Paper.
Saturday	
Monday.....	} Petitions, Adjourned Summonses, and General Paper.
Tuesday.....	
Wednesday	} Short Causes, Adjourned Summonses, and General Paper.
Thursday	
Friday	} General Paper.
Saturday	
Monday.....	} Third Seal.—Motions, Adjourned Summonses, and General Paper.
Tuesday.....	
Wednesday	} Petitions, Adjourned Summonses, and General Paper.
Thursday	
Friday	} Short Causes, Adjourned Summonses, and General Paper.
Saturday	
Monday.....	} General Paper.
Tuesday.....	
Wednesday	} Fourth Seal.—Motions, Adjourned Summonses, and General Paper.
Thursday	

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir JOHN STUART.

At Lincoln's Inn.

Friday..... Dec. 2	} First Seal.—Motions and Causes.
Saturday	
Monday.....	} Petitions, Short Causes, and Causes.
Tuesday.....	
Wednesday	} Causes.
Thursday	
Friday	} Second Seal.—Motions and Causes.
Saturday	
Monday.....	} Petitions and Causes.
Tuesday.....	
Wednesday	} Short Causes and Causes.
Thursday	
Friday	} Third Seal.—Motions and Causes.
Saturday	
Monday.....	} Petitions and Causes.
Tuesday.....	
Wednesday	} Short Causes and Causes.
Thursday	

Monday.....	19	} Causes.
Tuesday.....	20	
Wednesday	21	} Fourth Seal.—Motions and Causes.
Thursday		

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

Before the Vice-Chancellor Sir W. P. WOOD.

At Lincoln's Inn.

Friday..... Dec. 2	} First Seal.—Motions and General Paper.
Saturday	
Monday.....	} Petitions, Short Causes, and General Paper.
Tuesday.....	
Wednesday	} General Paper.
Thursday	
Friday	} Second Seal.—Motions and General Paper.
Saturday	
Monday.....	} General Paper.
Tuesday.....	
Wednesday	} Petitions, Short Causes, and General Paper.
Thursday	
Friday	} General Paper.
Saturday	
Monday.....	} Third Seal.—Motions and General Paper.
Tuesday.....	
Wednesday	} General Paper.
Thursday	
Friday	} Petitions, Short Causes, and General Paper.
Saturday	
Monday.....	} General Paper.
Tuesday.....	
Wednesday	} Fourth Seal.—Motions.
Thursday	

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

EQUITY CAUSE LISTS, AFTER MICHAELMAS TERM, 1864.

* * The following abbreviations have been adopted to abridge the space the Cause Papers would otherwise have occupied:—A. Abated—Adj. Adjourned—A. T. After Term—Ap. Appeal—C. D. Cause Day—Cl. Claim—C. Costs—D. Demurrer—E. Exceptions—F. C. Further Consideration—F. D. Further Directions—M. Motion—M. D. Motion for Decree—P. C. Pro Confesso—Pl. Plea—Ptn. Petition—R. Rehearing—Sp. C. Special Case—S. O. Stand Over—Sh. Short.

Before the LORD CHANCELLOR and the LORDS JUSTICES.

APPEALS.			
Thomas v. Cross (K., April 14) L. C.		Spirit v. Willows (S., Nov. 10) L. C.	
Mackintosh v. Stuart (R., Aug. 2) L. C.		Hargreaves v. Pennington (R., Nov. 15) L. C.	
Mackintosh v. Stuart (R. Nov. 1) L. C.		Att.-Gen. v. Master and Co-Brethren of the Hospital of St. John the Baptist, Bedford (R., Nov. 18) L. C.	
Bridges v. Highton (W., Nov. 3) L. C.		CAUSES.	
Rolfe v. Gregory (K., Nov. 5) L. C.		Baxendale v. West Midland Railway Co. (M D) L. C.	
Miller v. Bush (S., Nov. 10) L. C.		Baxendale v. Great Western Railway Co. (M D) L. C.	
Green v. Gascoyne (K., Nov. 10) L. C.		Att.-Gen. v. Chambers } (F	
		Att.-Gen. v. Rees } C)	

Before the Right Hon. the MASTER OF THE ROLLS.

CAUSES, &c.

Luff v. Lord (M D, pt. heard)	Vanden Brook v. Peto (M D)
Wood v. Charing-cross Railway Co. (M D)	Jones v. May (M D)
	Rawlins v. Eldridge (Cause)

Wakefield v. Llanelly Railway and Dock Co. (M D)
 Clowes v. Prescott (M D)
 Froom v. Leammonth (M D)
 Bruce v. Morison (Cause)
 Braithwaite v. Kearns (M D)
 Reeves v. Matthews (M D)
 Paul v. Pole (Cause, Witnesses)
 Pilling v. Pilling (M D)
 Howard v. Earl of Shrewsbury (Cause)
 Chadwick v. Turner (M D)
 Preston v. Bradney (M D)
 Pomfret v. Plucknett (M D, Mtn)
 Batchelor v. Morley (M D)
 Bostock v. Smith (Cause, Witnesses) Dec. 7
 Cheesman v. Price (M D)
 Hands v. Hands (M D)
 Earl of Durham v. Legard (M D)
 Plucknett v. Pomfret (M D, Mtn)
 Roose v. Poole (M D)
 Anderton v. Anderton (M D)
 Rockett v. Robinson (M D)
 Rickatson v. Gibson (M D)
 Bullock v. Bullock (Sp C)
 Wilkinson v. Musgrave (M D)
 King v. Morison (Cause)
 Bedborough v. Bedborough (F C)
 D'Huart v. Harkness (M D)
 Manley v. Manley (F C)
 Heywood v. Dougherty (F C)
 Shield v. Taylor (F C)
 Fordham v. Fordham (M D)
 King v. King (Sp C)
 Oldham v. Ashwin (M D)
 Briggs v. Eastwood (F C)
 Johnstone v. Blake (Cause)
 Swift v. Swift (M D)
 Cross v. Swann (F C, Summons to vary)
 Markwick v. Over (F C)
 Fleming v. Armstrong (M D)
 In re Chick's Estate } (F C)
 Chick v. Hope
 Campbell v. Beaton (F C)
 Spencer v. Spencer (F C)
 Flower v. Allen (M D)
 Elgood v. Campbell (M D)
 Newnham v. Newnham (F C)
 Williams v. Lloyd (Cause)
 In re Williamson } (F C, from Ch.)
 Williamson v. Barrow
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Goucher v. Clayton (M D)
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NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE.—The third meeting of the Department of Jurisprudence and Amendment of the Law will be held at their rooms, 1, Adam-street, Adelphi, on Monday next, the 5th December, when a paper will be read by Mr. F. S. Reilly, intitled "Observations on a Digest of Law, with reference to the Address delivered at York by the President of the Department." The chair will be taken at eight o'clock. The standing committee of the department will meet at seven o'clock.

MINUTES OF THE LAST MEETING.—Monday, Nov. 21, 1864.—Mr. W. T. S. Daniel, Q. C., in the chair. The minutes of the last meeting were read and confirmed. A paper was read by Dr. Waddilove, on "The Expediency of abolishing the Rules of Evidence which exclude the Testimony of the Parties in certain Civil Suits, and of Defendants in Criminal Trials." A discussion followed, in which Mr. Edgar, Mr. F. Hill, Mr. Allen, Mr. Hastings, Mr. Palmer, Dr. Walter Smith, Mr. Dillon, Mr. Newmarch, F.R.S., Mr. Elliott, and Mr. Shaen took part. It was moved by Mr. Teulon, and seconded by Mr. Stuart, "That the paper read by Dr. Waddilove be referred to the standing committee of the department, to consider the same, and to take any steps they may consider expedient thereupon." Dr. Waddilove moved, and Dr. Smith seconded, an amendment, that the debate be adjourned. After some observations from Mr. Teulon, Mr. Clarke, and Mr. Hastings, the amendment was withdrawn, and the resolution was put and carried in the following form:—"That the paper read by Dr. Waddilove be referred to the standing committee of the department, to consider the same, and to report thereon." The Department then adjourned to Monday, the 5th December, at eight o'clock.

A CLERICAL BARRISTER.—An interesting question is submitted to the benchers of the Inner Temple. Early in the present year a member of a noble family in this country, having gone through the usual course of terms, was duly called to the Bar by the honourable society. It has since come to the knowledge of the benchers, that the new barrister-at-law is a priest in holy orders, and the doubt now arises whether, under the circumstances, the gentleman having withheld information as to his clerical character, the call to the Bar is valid, and whether the profession of a barrister is such a secular calling as duly ordained clergymen are prohibited from entering upon. Such a case has not arisen since that of Horne Tooke, and that does not bear much analogy to the present; for, although Mr. Tooke went through his terms, he was not "called." When he presented himself for admission to the Bar, the question arose whether it was lawful to admit as a barrister a duly ordained clergyman; and in consequence of the doubts entertained, no benchers could be found to move the call, and further proceedings dropped. There are several clergymen who have been called to the Bar, and one bishop (Dr. Connop Thirlwall, Bishop of St. David's), but they were called before they were ordained; and there are one or two clergymen now practising at the bar, but they were also ordained after being called, so that it is held to be doubtful whether they are violating the canons of the Church in returning to their first profession. The case now under the consideration of the benchers of the Inner Temple is, it is believed, the first that has arisen of a barrister being called after having entered into holy orders, of which under the present state of the law a clergyman cannot divest himself.—*Express*.

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N O T I C E.

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THE JURIST.

LONDON, DECEMBER 10, 1864.

THE Court of Common Pleas has just delivered judgment in a case of some interest to all classes of the community. The question as to who is a traveller within the meaning of that word, as used in the stats. 11 & 12 Vict. c. 49, s. 4, and 18 & 19 Vict. c. 118, s. 2, has several times come before the Courts at Westminster, and the judges have in several cases delivered judgments, holding, that on a given state of facts, as found by justices, persons were or were not "travellers." It is difficult, independent of its legal aspect, to define the meaning of the term. The word is no doubt derived from the French verb "travailler," to labour, and certainly, in the popular use of the term, we imply a journey causing labour, either for pleasure, profit, or health. We should never apply the word to a person who went a short distance for any purpose. We can hardly contemplate the term ever being applied to a day's pleasure, much less to a walk of a few miles.

The question, however, is important both to travellers and innkeepers, whatever may be the meaning of the word. Indeed, the construction put on the word, as used in the act of Parliament, under which the appellant in the case decided in the Common Pleas, was convicted, has the effect of rendering almost every individual a "traveller" at some time or other, and most men are travellers every day.

The question was raised on a case stated for the opinion of the Court, under the 20 & 21 Vict. c. 43, and the Court has in fact delivered a judgment which upholds the authority of the two leading cases decided upon the very same point, one as late as the year 1861. The stat. 11 & 12 Vict. c. 49, s. 4, provides, "that no person shall open any house or place of public resort for the sale of fermented or distilled liquors, or sell therein such liquors in England or Scotland, before the hour of half-past twelve of the clock in the afternoon, or where the morning divine service in the church, chapel, kirk, or place of public worship shall not usually terminate by that time, before the time of the termination of such service on Sunday, or in England, before the like hour on Christmas-day or Good Friday, or any day appointed for a public fast or thanksgiving, except as refreshment for travellers." The statute (18 & 19 Vict. c. 118), by sect. 2, provides, that "it shall not be lawful for any licensed victualler, or person licensed to sell beer by retail, to be drunk on the premises, or not to be drunk on the premises, or any person licensed or authorised to sell any fermented or distilled liquors, or any person who by reason of the freedom of the mystery or craft of vintners of the city of London, or of any right or privilege, shall claim to be entitled to sell wine by retail, to be drunk or consumed on the premises, in any part of England or Wales, to open or keep open his house for the sale of or to sell beer, wine, spirits, or any other fermented or distilled liquor, between the hours of three and five

o'clock in the afternoon, nor after eleven o'clock in the afternoon on Sunday, or on Christmas-day or Good Friday, or any day appointed for a public fast or thanksgiving, or before four o'clock in the morning of the day following such Sunday, Christmas-day, Good Friday, or such days of public fast or thanksgiving, except to a traveller or to a lodger therein."

In *Atkinson v. Sellers* (5 C. B., N. S., 442) the information was laid under the latter act, and the evidence was, that the public-house was situate at Garston, a village about five miles from Liverpool; and it was further proved before the justices, that five persons, and some ladies, started from Liverpool, in two carriages, for a drive for pleasure on Sunday afternoon, and after driving eight miles, arrived at Garston between the hours of three and five in the afternoon; they drove into an inn yard, put up their carriages, ordered provisions for their horses, and went into the public-house themselves, and demanded refreshment, which they had; and they remained in the public-house all the afternoon, and then returned to Liverpool. It was also proved, that the publican asked each party whether they were travellers, and received an answer in the affirmative. The justices, on this evidence, convicted the publican, but the Court of Common Pleas held the conviction wrong; the Court holding, that to constitute a traveller, within the 18 & 19 Vict. c. 118, s. 2, it is not necessary that the party should be journeying on business. In *Taylor v. Humphreys* (10 C. B., N. S., 429) the information was under the same statute, and it was proved, that the appellant was an innkeeper at King's Norton, a village near Birmingham, a favourite resort of artisans of Birmingham; that at about four o'clock in the afternoon of Sunday four men were in the public-house smoking and drinking; one of them was the driver, and another the conductor, of an omnibus which plied from Birmingham to King's Norton, and which had been driven there that afternoon, as usual; that the other three persons had walked from Birmingham that afternoon, and had called at the defendant's house, a distance of four miles, and afterwards returned to Birmingham, two by omnibus, and the other on foot; that the publican asked whether they were travellers, and that they answered in the affirmative. The publican was convicted. The Court held the conviction wrong, and decided, that though a man who goes to a place a short distance from his home for the mere purpose of refreshment is not a traveller, within the meaning of the exception in the 18 & 19 Vict. c. 118, s. 2, yet one who goes to an inn for refreshment in the course of a journey, whether of business or pleasure, whether on foot or otherwise, is a traveller within the meaning of the statute; Chief Justice Erle saying, that in so deciding, the Court intended to give effect to the judgment in *Atkinson v. Sellers*. In the case of *Taylor v. Humphreys*, decided by the Court of Common Pleas in last term (see 10 Jur., N. S., part 1, p. 1153), the information was under the 11 & 12 Vict. c. 49, s. 4, which restricts the sale of liquors before half-past twelve on Sunday, except as refreshment for travellers; and the facts, as stated by the justices,

were, that a police constable went to the publican's house at twenty minutes past eleven in the forenoon, and found the door closed, but unfastened, opened it and walked in, and found in the house thirty-two persons, consisting both of men and women; some seated; some in the tap-room; others standing in the passage; some were drinking ale, and some had ale before them; and some were smoking. The publican, on being questioned, said they were travellers, and they had the appearance of artisans from Birmingham. The public-house was situated about two miles and a half from the centre of Birmingham. Two of the persons found drinking in the house were examined on oath, and they swore that they were inhabitants of Birmingham, and had walked from the town, through the fields and lanes, that morning, and had so extended their walk, the one to seven, and the other to eight, miles, and had stopped at the defendant's house on their way home. They stated that they did not leave home with the intention of calling at the defendant's house. It was also proved that they were asked, before they were supplied, whether they were travellers, and that they had answered that they were. The justices convicted the publican. The result was, that the case has been sent back to the justices for further evidence; but the judgment of Chief Justice Erle is valuable. He says, "We place great reliance on the local knowledge of the magistrates. They can tell whether the appellant (the publican) believed, with reason, that the guests were travellers, taking refreshment according to the exception given, or were seeking a pretence to that character, for the purpose of profaning Sunday, and passing it in drinking." The case is of great importance to a large class of persons, when we consider the liabilities of innkeepers. They are liable both to an indictment and an action for refusing to supply a guest at legal hours; and the hours of church service during which an innkeeper is forbidden to supply refreshment to the public in general, being legal hours in the case of a traveller, it follows that an innkeeper is liable to supply a traveller with refreshment during those hours, and refuses to do so at his peril. Chief Justice Erle, in the course of his judgment, says, that if a publican believed, or had reason to believe, when he supplied the drink, that he was supplying refreshment to a traveller, he ought not to be convicted under the statute; and he further lays it down, that a "traveller" is a person journeying for business, or pleasure, or health. The question, who is a traveller within the meaning of the statute, would seem, therefore, to be a question for the justices. Their decision should, however, be governed by the evidence as to the intention of the person sought to be brought within the definition. If the intention of a person be to go to a public-house for the purpose of drink, however distant that public-house may happen to be from the place where the person resides, he is not a traveller, within the meaning of the exception in the statute. If, however, the intention of the person was to take a walk, however short, and whether for pleasure, business, or health, and the person stops at a public-house, and takes refreshment; even though he may have selected a walk where he

is likely to fall in with a public-house, he is a traveller, within the meaning of the exception in the statutes, and will be entitled to all the privileges of that favoured class, and is armed with the most powerful weapons known to the law to enforce his right to refreshment.

We may add, that this last decision is entitled to even more weight than either the other cases referred to, from the fact that the judgment was a considered judgment.

THE LANDS CLAUSES CONSOLIDATION ACT, SECT. 85.

COTTER v. THE METROPOLITAN RAILWAY COMPANY
(10 Jur., N.S., part 1, p. 1014; 12 Weekly Rep. 1021).

THIS recent case, which is one of considerable practical importance with reference to the law of railways, turned upon the 85th section of the Lands Clauses Consolidation Act (8 & 9 Vict. c. 18), which provides for the case of a railway company being desirous of taking possession of lands at once, without waiting for the expiration of a tedious negotiation, or possibly of a yet more tedious lawsuit. In such case they are empowered to deposit in the bank, by way of security to the owners of the land, a sum of money, either the amount previously claimed by the party with whom they are dealing, or such a sum as shall, by a surveyor appointed by two justices in manner therein (sect. 58) provided, be determined to be the value of the lands in question, or of the interest therein, to which such party is entitled. The company are also empowered to give to such party a bond under their common seal, with two sufficient sureties, in a penal sum equal to the sum so to be deposited, "conditioned for payment to such party, or for deposit in the bank, for the benefit of the parties interested in such lands, as the case may require, under the provisions therein contained, of all such purchase money or compensation as may in manner thereinbefore provided be determined to be payable by the promoters of the undertaking (the company), in respect of the land," with interest at 5l. per cent. These preliminaries having been properly completed, the company may at once enter on the lands, and proceed to construct their works.

In the present case the plaintiff, who was lessee of the house in question, had claimed 3650*l.* for purchase money and compensation. The company caused the house to be valued by a surveyor appointed by two justices, who estimated the value at 200*l.* This sum the company paid into the bank, and delivered a bond in the following form:—"Now, the condition of the above written bond is such, that if the said railway company or their successors shall at any time hereafter pay unto the said William Cotter, his executors, administrators, or assigns, or deposit in the bank for the benefit of the parties interested in," &c., following the words of the act as quoted above.

The plaintiff filed his bill for an injunction to prevent the company from taking possession, on the ground of the invalidity of the proceedings. Upon the hearing before Sir R. T. Kindersley, V. C., the injunction was granted. A number of points arose upon the case, which we will refer to seriatim.

It appeared, in the first place, that the surveyor had made the valuation without going inside the house at all, from a mere inspection of the exterior. It was held, obviously in accordance with reason, that the surveyor had not used the means which he was bound

to see, in order to make a fair valuation. His Honor thus laid down the law upon the point:—"If, in any case under the 85th section, where a surveyor had made his valuation, he had done so in such a manner as to enable him to do it fairly, the Court would not disturb it; but here it was not so, and, therefore, the Court would interfere."

It was, again, objected, that the bond did not accurately describe the house in question; but his Honor thought this immaterial, inasmuch as there could be no question as to the identity of the house, it being apparent on the face of the bond that William Cotter was interested in it. With this should be compared the case of *Willey v. The South-eastern Railway Company* (1 Mac. & G. 58; 6 Railw. Cas. 100), in which it was held, that the land was sufficiently identified, by reference to the map of the railway. It follows, therefore, as a general proposition, that the bond need not contain a description of the land taken, if its identity be sufficiently pointed out, whether by reference to the railway map, as in *Willey v. The South-eastern Railway Company*, or by the introduction of the name of the lessee, as in the present case, or otherwise.

The bond in the present case was, however, held bad, on account of the introduction of the words, "at any time hereafter," which are not in the act.

Again, the surveyor had not included in his valuation the trade fixtures. His Honor adhered to his own former decision, in *Gibson v. The Hammersmith Railway Company* (9 Jur., N. S., part 1, p. 221; 11 Weekly Rep. 299), that they must be included.

The above are the most important points connected with the present case. We propose to add a short statement of the various points, which have been from time to time decided with reference to the form of the bond to be given under this section of the Lands Clauses Consolidation Act.

The rule appears to be, that the words of the act must be exactly followed without alteration or addition. Thus, it has been held, that the condition must not be for payment "on demand" (*Langham v. The Great Northern Railway Company*, 1 De G. & S. 486; *Poynder v. The Great Northern Railway Company*, 5 Railw. Cas. 196), or "at any time hereafter" (*Cotter v. The Metropolitan Railway Company*, 10 Jur., N. S., part 1, p. 1014; 12 Weekly Rep. 1021); that the words "as the case may require" must not be omitted (*Poynder v. The Great Northern Railway Company*, supra); and that the words "or otherwise" (deposit in the bank, or otherwise, for the benefit of the parties interested, &c.) must not be inserted. (*Hoskins v. Phillips*, 3 Exch. 181).

It appears, however, that the condition of the bond may be for payment to the landowner, his heirs, executors, administrators, or assigns, as the case may be, although these words are not in the act. (*Hoskins v. Phillips*, 3 Exch. 181; *Cotter v. The Metropolitan Railway Company*, 12 Weekly Rep. 1022).

In a case where the land belonged to five tenants in common, and the company paid into the bank one sum to the joint account of the five, and delivered to them one bond, conditioned for payment to the five, nominatim, "heirs, executors, administrators, and assigns," &c., it was held that the proceedings were invalid. (*Langham v. The Great Northern Railway Company*, 1 De G. & S. 486; 5 Railw. Cas. 263). And the same result appears to follow from the case of *Daubney v. The Manchester, &c. Railway Company* (10 Law T. 263). It appears to follow, that the company should deal with tenants in common separately for their separate interests.

It is hardly necessary to say, that as the company cannot retire from their notice to treat, the bond must be given in respect of all the land included in the no-

tice to treat, and not of part only. (*Barber v. The North Staffordshire Railway Company*, 2 De G. & S. 55; 5 Railw. Cas. 401).

Where the landowner has, under sect. 92 of the Lands Clauses Consolidation Act, required the company to take the whole of a house or manufactory, of which they desired to take part only, the company, proceeding under sect. 85, must make the deposit and deliver the bond, in respect of the whole, and not of that part only which they themselves desired to take. (*Giles v. The London, Chatham, and Dover Railway Company*, 1 Drew. & S. 407; *Gibson v. The Hammersmith Railway Company*, 9 Jur., N. S., part 1, p. 221; 11 Weekly Rep. 299).

In conclusion, the case of *Willey v. The South-eastern Railway Company* (1 Mac. & G. 58; 6 Railw. Cas. 100) calls for some additional comment. In that case, the company, dealing with a lessee for years, delivered a bond under this section, conditioned for payment to the lessee, his heirs, executors, administrators, or assigns, or for deposit in the Bank of England, "as the case may require, for his or their benefit," &c., instead of "for the benefit of the parties interested in such lands, as the case may require, which are the words of the act." Lord Cottenham held the bond to be good, on the principle, that the company might, if they saw fit, deal with a party as being absolutely entitled to the interest which he claimed, and that they had done so in the present case. It may be observed that, although no doubt the company might after this decision deliver a bond in the form followed in this case, it is very doubtful whether this would be a judicious course to adopt. It is conceived, that if the landowner should turn out not to be absolutely entitled, the company, taking possession under a bond in this form, might be ejected by the persons entitled in remainder. It seems also clear that this case would be no authority whatever in favour of a company deliberately taking this course, when they knew, or had reason to suspect, that the party with whom they treated was not absolutely entitled.

CONCENTRATION OF THE COURTS.

It is understood that the two bills of the last session, called "The Courts of Justice Building Act" and "The Courts of Justice Money Act," will be reintroduced, and vigorously prosecuted, in the coming session. The scheme of the money bill is, that Parliament should grant a sum equal to the value of the property which will be surrendered, and rents which will cease to be payable, when the new courts are occupied, and that the balance, estimated to be considerably within a million sterling, shall be paid out of the Suitors' Fund in Chancery, and, if necessary, by the taxation of suitors to the Courts other than the Court of Chancery. A request that the benchers of the Inner Temple will express their opinion in favour of the measure is in course of signature, and has been already very numerous signed by members of the bar of that Inn; and a similar movement is in progress in the Middle Temple. We have not heard of any action on the part of Gray's Inn. As to Lincoln's Inn, the bar and the bench are not at one; the latter having determined to postpone the interests of the public and the bar to the paramount pecuniary interests of the Inn, as holders of chamber property. These sentiments are expressed in the following remarkable petition against the bill of the last session, signed by Mr. Walker, Q. C., on behalf of the benchers:—

"That a bill has been introduced into your honour-

able House to enable the Commissioners of her Majesty's Works and Public Buildings to acquire a site for the erection and concentration of Courts of Justice, and of the various offices belonging to the same.

"That your petitioner objects only to so much of the said bill as will enable her Majesty's Government, or the Lord Chancellor, to remove the five courts of the Lord Chancellor, the Lords Justices, and the three Vice-Chancellors, from Lincoln's-inn, where they now are, to another site, to be purchased for that purpose; and your petitioner submits to your honourable House, that such removal is inexpedient, for the following reasons:—

"The convenience of the equity courts being in Lincoln's-inn, where most of the practitioners therein have chambers, and are members of this society, greatly preponderates over any real advantage of all the superior courts of law and equity being under one roof, as has been proved by the Lord Chancellor from time immemorial, and the Vice-Chancellors ever since the institution of that office above fifty years ago, and the Lords Justices since their institution in 1851, having always sat in Lincoln's-inn out of term time, and ever since the year 1853 in term time also, instead of sitting with the common-law courts in Westminster Hall.

"The Master of the Rolls has always sat at the Rolls House, in Chancery-lane, when the other equity judges have sat in Lincoln's-inn; and your petitioner understands, that the present Master of the Rolls objects to his court being removed to the site contemplated by the said bill.

"Whatever advantage there may be in the proximity of all the superior courts will be fully attained, and with less confusion and more convenience, by the equity courts not being in the same building with the common-law and other courts, but at a short distance therefrom, as will be the case if the equity courts are left in Lincoln's-inn while the other courts are built on the proposed site near Lincoln's-inn.

"This society has always hitherto provided courts for the Lord Chancellor and for the Lords Justices since their institution, without any cost to the public or any charge on the Chancery Suitors' Fund, except a small sum for interest on the cost of altering the old dining-hall of the society for that purpose, which the Lord Chancellor is authorised to pay out of the Suitors' Fund, by the act 15 & 16 Vict. c. 87, s. 52.

"These courts are convenient and sufficient, and it would be a mere waste of money to buy a site for and to build other courts instead within the distance of a quarter of a mile, as is proposed by the said bill.

"In 1816 this society granted a site in Lincoln's-inn for the court of the first Vice-Chancellor, then called the Vice-Chancellor of England, and his court was built thereon under the act 56 Geo. 3, c. 86.

"In 1841 the society built two more courts for the second and third Vice-Chancellors, at a cost of 4000*l.*, and the society has never received or asked for any rent or payment for the same.

"The two last-mentioned courts were only built by the society for temporary buildings, although they have now been used for twenty-two years, in consequence of no better courts being provided. Those courts, and also the first Vice-Chancellor's Court, are now inadequate and inconvenient for the business which has to be transacted by the Vice-Chancellors under the altered practice of the Court of Chancery.

"In the year 1859, the necessity for new Vice-Chancellor's Courts and chambers having become urgent, the means of providing the same were discussed between the then Lord Chancellor and the Vice-Chancellors and the Masters of the bench of

this society; and it was found that a slight extension of the aforesaid act, the 15 & 16 Vict. c. 87, would be sufficient to enable the Lord Chancellor to guarantee a perpetual instead of a temporary rent for any buildings to be provided for the accommodation of the Court of Chancery; and the Masters of the bench undertook to spend a sum not exceeding 100,000*l.* in building such courts and chambers on a plan arranged with the Vice-Chancellors, and approved by the Lord Chancellor, on being guaranteed a rent equal to 4*l.* per cent. on the cost thereof.

"Accordingly, Lord Chelmsford, then Lord Chancellor, introduced a bill for that purpose, which was read a second time, and the plans of the proposed courts were laid before the House of Lords; but before any further proceedings therein the Parliament was dissolved, and soon afterwards a commission was issued to inquire into the subject of removing all the superior courts from Westminster Hall. The commissioners, in 1860, recommended such removal, and several bills have been since introduced for the purpose, which have always been opposed in Parliament on the ground of the great expense of such a scheme, which is estimated to cost one million and a-half of money; and objected to by your petitioner on grounds similar to those now stated; and such bills have all been rejected or abandoned.

"If the said bill of 1859 had been passed, the necessary courts for the three Vice-Chancellors would have been completed several years ago, and at an insignificant cost compared with the expense of building a complete set of new equity courts, as part of a grand scheme which will probably not be completed for many years.

"It appears by another bill, now introduced into your honourable House, that it is again proposed to apply a portion of the Chancery Suitors' Fund, or of moneys arising therefrom, to the building of new common-law courts, although it is apparent from returns made to Parliament, that there is barely enough of the Suitors' Fund, and moneys arising therefrom unappropriated, to pay interest on the cost of new Vice-Chancellors' Courts, even if built on the comparatively cheap plan proposed by your petitioner.

"Your petitioner, therefore, humbly submits to your honourable House that the courts of equity ought to be excepted from the said bill, and your petitioner hereby repeats the offer of the said society, to build on their own ground new courts and chambers for the three Vice-Chancellors, according to the said plan already laid before the House of Lords, or with any alterations thereof which may be approved by the Lord Chancellor, on being guaranteed out of the Suitors' Fund, or otherwise, either the actual cost thereof, or a perpetual rent for the same, at the rate of 4*l.* per cent. on such actual cost, including the loss of rent of any chambers which may be destroyed thereby.

"Your petitioner, therefore, humbly prays that the said bill may not pass into a law as it now stands, but that the same may be amended, by excluding the removal of the courts of equity therefrom, and by inserting a power similar to that contained in the said bill of 1859, to authorise the Lord Chancellor to order a perpetual rent to be paid out of the Suitors' Fund to the honourable Society of Lincoln's-inn for any improvement or alteration which they may make in the present Courts of Chancery in Lincoln's-inn, and for any new courts and chambers which they may build or provide for the judges of the Court of Chancery, with the approval of such judges and the Lord Chancellor, at a cost not exceeding a sum to be fixed in such bill, and that no appropriation of the Suitors' Fund may be made inconsistent with such power, or

with the provisions of the said act 15 & 16 Vict. c. 87, under which the Suitors' Fund is already applicable to such purposes."

Thus it will be seen that the benchers of Lincoln's-inn object to the erection of buildings for the accommodation of all the courts of justice in the neighbourhood of Lincoln's-inn, on the following grounds:—

First, because it is more convenient that the chambers of equity counsel should be all round the equity courts than that they should be on one side of them, as is proved by the fact, that the equity judges sit in Lincoln's-inn, and not at Westminster.

Secondly, because—(a) the Master of the Rolls always sits in Chancery-lane; and—(b) Mr. Walker believes that Sir J. Romilly objects to the proposed site.

Thirdly, because the separation of the equity courts from the common-law courts by a little space is likely to prevent confusion [fusion?]

Fourthly, because the present equity courts (with the exception of the erection of one of the Vice-Chancellor's Courts) have been provided by the society almost gratis; and because the old Vice-Chancellor's Court and the two sheds which were erected in 1841 continue to be used for want of proper courts; and because the Government scheme will cost money.

Fifthly, because the benchers have a scheme for building equity courts on their own ground, and letting them to the public at a rent of 4l. per cent. on the cost, to be paid out of the Suitors' Fund.

Sixthly, because such courts might have been completed several years ago, whereas the courts contemplated by the bill could not be built for some years to come; and if built, would form part of a grand scheme, which cannot be said of the proposed Lincoln's-inn Courts.

Seventhly, because either scheme would absorb the whole of the Suitors' Fund.

We regret that we cannot supply the eighth and last argument, which by some accident has not found its way into the petition. It was founded, we believe, on an estimate of the fall of rents in Lincoln's-inn which would ensue upon the removal of the equity courts to a site on the other side of Carey-street.

On the other hand, the Incorporated Law Society presented a petition in favour of the bills, in which, after referring to Lord Chelmsford's bill of 1859, for carrying the Lincoln's-inn scheme into effect, they said:—

"That your petitioners strongly opposed the said bill on various grounds; amongst others, that whilst it would burthen the fund in question with a heavy annual charge, it would provide only a partial and utterly inadequate remedy for the great evils complained of; that the judges of the courts of equity ought to discharge their important duties in public buildings the property of the nation, and not in buildings held at the pleasure of a private society, however honourable or dignified. And above all, that if the plan of the benchers of Lincoln's-inn were carried into effect, it would perpetuate the separation of the courts of equity from the other courts, and for ever prevent that concentration which the concurrent testimony of all competent witnesses had declared to be the only effectual remedy for the existing evils.

"That communications thereupon took place between your petitioners and various members of the then Government, and particularly the then First Lord of the Treasury (the Earl of Derby), the Lord Chancellor (Lord Chelmsford), and the Chief Commissioner of Public Works and Buildings (the Lord John Manners), the result of which was, that the Government withdrew the bill for carrying into effect the Lincoln's-inn scheme, and undertook to advise the Crown to

appoint a commission, by whom the whole subject should be thoroughly investigated.

"That accordingly, the Royal Commission to which your petitioners have already referred was issued in the year 1859, under the advice of the then ministers of the Crown, for the purpose of inquiring into the expediency of the concentration of all the superior courts, both of law and equity, with their respective offices, into one place or neighbourhood, for the selection of a site or sites, and for the suggestion of the pecuniary means for procuring such site or sites, and for erecting suitable buildings thereon.

"That the commissioners examined numerous witnesses of the highest character, and possessed of the best means of giving correct and reliable information and opinions on the subjects thus referred to them. They availed themselves of the inquiries which had been already made under parliamentary authority, or otherwise, on the same or closely connected subjects; they were also supplied with the returns from different offices, and upon some parts of the inquiry the commissioners had all of them, in a greater or less degree, the benefit of much personal experience, and were thereby enabled more correctly to appreciate the evidence and information derived from other sources.

"That the commissioners made special and minute inquiry into the scheme which, as above stated, had been suggested by the honourable Society of Lincoln's-inn, and which had formed the subject of the Lord Chancellor's bill. The plans of the society were laid before them, and the then treasurer of the society, as well as other witnesses, were examined by them in explanation thereof, and in the support of the society's views.

"That the commissioners made their report in the year 1860, and therein, amongst other things, stated that, upon the desirableness of such a concentration as was described in the commission, they had had no division of opinion, or difficulty in arriving at a conclusion—the evidence of witnesses, entitled to the greatest consideration personally, and from their means of acquiring knowledge on the subject, being all one way. They further stated, that they desired to make the concentration which they recommended as comprehensive as possible, as much of its advantage depended on its completeness; and that, in such concentration, they included not merely that of courts with courts, but of courts with their offices. They pointed out, that if court be separated from court, and courts be at a distance from their offices, if these last be separated from each other, and if both be at a distance from the chambers of barristers and the offices of attorneys and solicitors, it is obvious that time must be lost in the transaction of business, in every stage of it, and by every one concerned in it. And they added, that it was difficult to convey in statement an adequate idea of the daily mischief which results from the scanty and inconvenient accommodation which the courts at present afford for the great object of the central administration of justice; how much fatigue, bodily ailment, and dissatisfaction are created by it; how much the course of business is delayed, impeded, and diverted by it; and how, in a great number of ways, it is rendered more costly.

"The commissioners further reported, with reference to the Lincoln's-inn scheme, that it was not a temporary one, nor could it be carried into effect, except by a very large outlay of money; that it was founded on the principle of making permanent the present separation of the equity courts from those of common law, and all other branches of the administration of justice. That it was, therefore, inconsistent with the recommendations they thought it their duty to make; and not only so, but it would, if car-

ried into effect, certainly postpone for an indefinite period, if not practically extinguish, all hope of the general concentration to which they attached so much importance.

"Finally, the commissioners recommended as the site for the proposed concentration, the identical site which it is the object of the first of the two bills now before your honourable House to enable the Crown to acquire, in favour of which they stated, that they had the concurrent testimony of witnesses from every branch of the profession.

"That the commissioners, one of whom was one of the present Vice-Chancellors, were unanimous in their opinions and recommendations.

"That if the new courts of equity be built on the northern side of the proposed site, such courts when built will, in the majority of cases, be as near to, in some actually nearer, and in none more than a few yards further distant from, the chambers of the barristers practising therein, than the existing courts.

"That to exclude the courts of equity from the scheme proposed by the bills now before your honourable House, as proposed by the Society of Lincoln's-inn, would, in the judgment and belief of your petitioners, be, to sacrifice the general interests and convenience of the suitors and the public, to the personal interests of a few individuals, and to the supposed dignity and importance of that society.

"That your petitioners firmly believe that the funds proposed to be dealt with by the second of the said bills, are legally and adequately available for the purpose, and will be found amply sufficient, under the arrangements contemplated by the same bill, to effect the object desired, without imposing any burthen on the public.

"Your petitioners, therefore, humbly pray that the same bills may pass into law in their present form, and especially that no alteration may be made therein for the purpose of excluding the courts of equity from the operation thereof."

LIBEL.

[*Queen's Bench Sittings at Westminster, before Cockburn, C. J., and a Special Jury.*]

BLAKE v. STEVENS and Others.

This was an action by an attorney against Messrs. Stevens, Sons, & Haynes, law publishers, for a libel upon him in his character as an attorney, contained in Pulling's Law and Practice of Attorneys. The passages complained of were the following:—

"If an attorney or solicitor be guilty of a criminal offence, or other gross misconduct, the Court of which he is an officer will interfere, with the view to determine whether the misconduct has disqualified him from any longer continuing as such officer; and, on a gross case being proved, will peremptorily order the name of the defaulter to be struck off the rolls; and this summary jurisdiction will be exercised in a clear case, whether the offence was committed when acting in a professional capacity or not."

To which there was a note—"See *Re Blake* (30 L. J., Q. B., 323)." And then, at a subsequent page:—

"The power to remove from the rolls the name of an attorney who has misconducted himself, is simply the power of the Court over one of its officers, shewn to be no longer worthy to be trusted."

To which there is this reference:—

"See *Re Blake* (30 L. J., Q. B., 323), where the attorney, having borrowed money of a person, not then his client, on deposit of a mortgage deed, and after-

wards got it back, and, without the lender's consent, received the money and appropriated it, the Court ordered him to be struck off the rolls."

This was a mistake; he had only been suspended for two years; and the error was afterwards corrected by a cancellation of the page, and substitution of a new page containing the correction. However, in August last, before the error had been observed, the plaintiff's attorneys wrote to the publishers to the effect, that he had instructed them to proceed against the publishers, and desiring the name of their attorneys, which was accordingly supplied, and the mistake was at once corrected, as above stated; but this action was brought.

Lush, Q. C., and Henry James, for the plaintiff.

Bovill, Q. C., and Rew, for the defendants.

Lush, Q. C., said, as the libellous passage was published in a work of great learning and authority, it was calculated to do all the greater injury. It was quite true that the plaintiff, who was an attorney of forty years' standing, was two or three years ago suspended for two years; but that was quite a different thing from being struck off the rolls, and was a sentence of a much milder character. He had re-entered practice, and regained the respect and confidence of his clients; and this libel was calculated to destroy his character, and ruin him in his profession, which he had a right to practise after the expiration of the period of his suspension.

COCKBURN, C. J.—As it was a mere mistake, and has been corrected, need the case go further? You see, Mr. Lush, your client's attorneys asked no correction, but at once asked for the names of attorneys, in order to institute proceedings.

Lush said his client had not been informed of the correction until now; and it was really necessary for him to bring the action, in order to vindicate his character.

The publication of the libel having been proved, the plaintiff was called, and stated that he was in practice, with the exception alluded to, ever since 1821. After his suspension he had, in November, 1862, resumed practice at Putney, and had since remained in practice. It was elicited that there were others named "Blake" in the profession; but it did not appear that there was any other person of that name and the same Christian name (Francis), nor that any one else of that name had been struck off the rolls or suspended.

The report in the *Law Journal* was by consent put in as evidence, instead of the formal record of the proceedings. The report of the case, which set forth the Master's report at length, was rather long. The marginal note is as follows:—

"Where an attorney of the court has been guilty of gross misconduct, the Court will interfere summarily, although the misconduct does not amount to an indictable offence, and arose in a transaction, in which the attorney was not acting in that character."

"B. having previously known an attorney, and employed him as an attorney, informed him that he had some money to invest, on which the attorney himself borrowed it on the security of his promissory note, and the deposit of a mortgage deed of an estate in Ireland, on which he had advanced a larger sum. The estate coming into the Encumbered Estates Court, the attorney borrowed the deed of B., in order, as he informed B., to substantiate his claim on the estate; he afterwards returned the deed, but by this temporary possession of it he was enabled to receive the whole of his advance, which he accordingly received, and appropriated the whole to his own purposes. He told B. nothing of the matter, but went on for several years paying him interest on his loan. The attorney afterwards became

insolvent, and B. lost the whole of his principal. On these facts the Court suspended the attorney from practising for two years."

The judgment of the Court contained the following observations:—

"When an attorney is shewn to be guilty of a gross fraud, though it may not have been such a fraud as to render him liable to criminal proceedings, and though the fraud was not committed by him while the relation of attorney and client was subsisting, yet still in such a case, where one who is an officer of the court has been guilty of gross fraud and dishonesty, we are called upon for the protection of suitors and others, who would give credit to him as an attorney, to visit such misconduct with summary punishment. Upon this principle the present attorney must be held responsible, for circumstances of a gross fraud have been proved against him. . . . It has been urged as matter of extenuation, that Blake at the time he borrowed the deed and obtained the money, was in a position to repay Beeviss at any time, and he may possibly have really so intended, but this kind of statement we have constantly made in cases of embezzlement.

"These are the facts of the case, and the delinquent attorney must be visited by some punishment adequate to the offence; and though the Court will not proceed to extremities and strike him off the rolls, his certificate must be suspended for two years."

It is to be observed, that the passage in Mr. Serjeant Pulling's book does not mention the Christian name of the attorney, and it only appeared from the report in the *Law Journal* that he was Francis Blake the plaintiff.

Bovill called no witnesses, and in addressing the jury on behalf of the defendants, read the above passages from the report of the case in the *Law Journal*, and contended that the facts of the case were correctly stated in the passage complained of; and the only error was in the extent of the punishment.

COCKBURN, C. J.—The first passage, I am clearly of opinion, is not actionable; nor would the second passage be so but for the unfortunate mistake made. The proposition of law is correctly stated; and if there had been a mere reference to the case, and, perhaps, even if there had been only a summary of it, it would have been privileged, but then there is unfortunately this mistake.

Bovill contended, that it was a mistake of no real or substantial consequence to the plaintiff, because the injury would be in the imputation upon his character, and that would consist in the conviction for a "gross fraud," and the mere extent of the punishment would not affect the merits of the case, nor enhance the injury arising from the imputation. The imputation was quite true as regarded the nature and quality of the offence; and if the statement had been that the plaintiff "might" have been struck off the rolls, it would have been strictly correct. There was the mere mistake that he had been struck off the rolls instead of being suspended for two years. But then it was accompanied by a reference to the report, from which it would appear that he had been suspended; and it was only in the report that it would appear that it was the plaintiff who was referred to in the libel. Now, no one but a lawyer would be likely to read the learned work of Mr. Serjeant Pulling; and any one who was a lawyer would refer to the report, and see the exact truth. The matter was really one of very great and general importance to public writers and publishers. It was clear law that reports of cases in courts of law were privileged; and surely the citation was equally privileged, otherwise the mere reading of a report out loud would be a libel, and so the mere

handing a published report to another person. The principle was, that defamatory matter was not actionable without malice; and although *prima facie* the publication of defamatory matter was evidence of malice, yet that presumption was rebutted if it was published upon an occasion of a real or supposed duty or interest. If on such an occasion a mistake was honestly made, without malice, there was no liability to action. As in the case of a master giving a servant a bad character, for which he was not liable, even although it was a false character, unless it was maliciously or recklessly false. The law of privileged publication was based upon a similar principle; and it would, indeed, be unfortunate if public writers had not the same degree and measure of protection as all persons in private matters. If the occasion of publication was privileged, there was no action without malice.

COCKBURN, C. J.—If the publication is unfair, it will not be privileged.

Bovill.—If the jury are satisfied of malice; but the unfairness is only evidence of malice.

Lush.—There is legal malice if it is unfair.

Bovill.—Not unless it is so unfair as to be malicious.

COCKBURN, C. J.—If it is unfair and injures another it is actionable. The question I shall leave to the jury is, whether it was unfair.

Bovill.—And not whether it was malicious?

COCKBURN, C. J.—I assume that it was not malicious in fact, but in law; I will, however, reserve the question of law; it is one of very great importance, not, perhaps, in this particular case, but as a general question, and I will do anything to put it in a train for solemn decision. There is no suggestion, of course, that the learned author of this work had any intention of injuring the plaintiff. On the other hand, you cannot contend that the statement was "fair." No doubt it was intended to be fair, and was a mere mistake. But it is a misstatement to say that a man who has been suspended has been struck off the rolls.

Lush.—We say there was legal malice, as the statement was unfair.

Bovill.—There was no damage and no real libel. If a man who had stolen a sovereign was convicted and sentenced to imprisonment for a month, would it be a libel to say he had been sentenced to two months' imprisonment? Or if a man who had been convicted of burglary and had been sentenced to transportation for fourteen years, was said to have been sentenced for life? The fact that the plaintiff had been convicted of a gross fraud was not disputed, and what did it matter for what period the plaintiff had been suspended, for two years or for life?

COCKBURN, C. J., summed up the case to the jury.—"This action," he said, "has been most unfortunately brought, and as unfortunately defended. It is clear that a most serious mistake has been made, and it is unfortunate that an action should have been brought without asking for its correction. On the other hand, it is equally unfortunate that the action should have been defended without saying, 'It has been corrected.' The more important question, however, is, whether this is libellous. That is a question partly of law and partly of fact. If the occasion of publication is privileged, and what is to be found in the book is a fair statement of what is to be found in the report, then it is not libellous. Gentlemen, in the present state of our law, when, unfortunately, we have no code of laws nor consolidation of statutes, a great portion of our law is to be found only in decisions of courts of justice; and those decisions would very speedily fade from recollection if they were not recorded in the shape of authentic reports, which can be referred to. And as, unfortunately, the reports,

which contain the various decisions of our numerous courts, are only to be found scattered over hundreds and hundreds of volumes, if it were not for the assistance of text-writers, who from time to time give a summary of the decisions which have been pronounced, and arrange them in such a way, that by that means they can be ascertained and studied, I do not know where we should find ourselves; our law would be a chaos of confusion. It is bad enough as it is, but would be a thousand times worse if it were not for the labours of those who report in our courts, and those who afterwards embody in their works the united labours of the bar and the bench. It is, therefore, most important that reports of proceedings in courts of justice should be published, and it is of equal importance that those who embody the substance of these reports in the shape of scientific treatises, should be privileged when they fairly and honestly exercise the functions of legal writers. And if, therefore, a learned writer, in expounding a certain branch of the law, refers to reported cases faithfully and fairly, then, although they may be derogatory or defamatory to individuals mentioned in them, the writer is not liable to action. And if, therefore, in the present instance, the plaintiff, who has had the misfortune to fall into this 'scrape,' has no more to complain of than that his case was referred to as illustrating the legal proposition that an attorney guilty of misconduct might be struck off the rolls, as that is certainly laid down in the case, he would have had no cause of action. The learned writer would have referred to the report, where the facts are truly stated, and he would have been privileged. But, unfortunately, the passage goes beyond the facts of the report, and it states as a fact that he was struck off the rolls, when, in truth, he was only suspended. Now, there is a great difference between these cases. This was the case of a man who was suspended for two years, because unfaithful to his trust as to money he had received, and ought to have handed over to his client, but unfortunately applied to his own use, with the intention, at the time (as I understood, and stated in my judgment on the case), to repay the money (an intention which many a man has who is afterwards called upon to answer for the misappropriation of funds), but which intention he was unfortunately unable to carry out. That was the case before us, and upon which we pronounced our judgment, that he should be suspended for two years. But it is a very different thing to say that he was struck off the rolls. We did not think the case was one which called for so serious a punishment. It is, therefore, most unfortunate that such a misstatement should have been made; and if it had been at once acknowledged as a mistake, it would have been far better than to fling in the teeth of the plaintiff these unfortunate proceedings, of which he has already paid the penalty. That, however, does not affect the question we have to decide, which is, whether this is a fair statement of the facts. No one supposes that Mr. Serjeant Pulling had any desire to injure the plaintiff. But then comes the important question, whether, although the publication is so far privileged, that if you make a fair and honest representation of the facts, however it may affect the character of the person of whom you are speaking, you are relieved from legal liability—you are not called upon to take care to use reasonable care and diligence in order to be correct. That seems the common sense of the matter, though I do not wish to interfere with your judgment by laying down any doctrine of law. All I intend to submit to you (reserving the question of law) is, whether this statement, being that the plaintiff was struck off the rolls, and the report re-

ferred to being that he was only suspended, that was a statement reasonably fair of that which is contained in the report? We must take it that it was a mistake. Did it arise from want of reasonable diligence and care? There is the prior question, indeed, whether the passage is libellous. There can be no doubt that it is libellous to say that an attorney has been struck off the rolls. It is said, that the passage complained of refers to the report which states the facts correctly. But every one would not take the trouble to refer to and read the report. It is urged, that it does not appear, but from the report, that it is the plaintiff who is referred to; but that is for you to say. Then, if you think that the passage is libellous on the plaintiff, and also that it is not a fair statement of the report, then comes the question of damages; as to which, it being beyond all doubt a mere mistake, and the case being referred to as one which undoubtedly does illustrate the proposition of law for which it is cited, viz. that an attorney may be struck off the rolls for misconduct, it would not have been a case for serious damages, if it were not for the way in which the action has been defended; not merely urging that it was a mistake, but bringing up against the plaintiff the misconduct for which he has already suffered. That is not the way in which parties who are in the wrong should defend themselves; and you may consider all the circumstances in your estimate of the damages." In conclusion, the Court left the following questions to the jury:—First, does the passage refer to the plaintiff? Secondly, is it libellous? Thirdly, is it a fair representation of the report? If you find the first two questions for the plaintiff, assess the damages conditionally; but also find the third question specially, with a view to the question of law reserved.

The jury found that the passage referred to the plaintiff, and was libellous; and that it was not a fair representation of the report; and assessed the damages for the plaintiff at 100*l*.

COCKBURN, C. J.—That is, subject to the point of law reserved for the Court.

[It is not easy to see what point of law was reserved. The only substantial question in the case was, whether an erroneous statement of the punishment inflicted on a person, who could not be identified without referring to the report which would correct the error, involved any appreciable damage.—ED.]

The Judicial Committee of the Privy Council (consisting, for the present, of the Lords Justices Knight Bruce and Turner, Sir Lawrence Peel, Sir Edward Ryan, and Sir James Colville) is still engaged in the hearing of appeals from India and the eastern dependencies. The hearing of the petition of the Bishop of Natal (Dr. Colenso), which was fixed for Monday next, the 12th inst., is deferred till Wednesday, the 14th.

HEAVY RAILWAY COMPENSATION CLAIM.—On Wednesday last, at the Sheriff's Court, Red Lion-square, a remarkable compensation case, *Searly v. The Tottenham and Hampstead Railway Company*, engaged a special jury, under the presidency of Mr. Under-sheriff Burchell, till nearly six o'clock. Mr. Hawkins, Q. C., with Mr. Robinson, was for the claimants, the executors of Mr. Searly; and Mr. Lloyd, with whom was Mr. Mellor, for the company. The claim was nearly 14,000*l*. for land taken, and for the depreciation of the other portion in the Junction-road, between Kentish Town and Holloway. For the land, about 3000*l*. was asked, and for the damage to the rest, 10,500*l*. Ten acres had been taken of the cor-

poration of the Sons of the Clergy, and buildings planned. The railway would interfere with the plan, and the damage estimated at upwards of 10,000*l*. On the part of the company, the land was estimated at about 1000*l*., and the damage at 500*l*. Mr. Fuller, the surveyor to the property, was of opinion, that the proposed embankment and station on the estate would enhance the value of the property. Mr. Undersheriff Burchell told the jury that the case was an important one, and the discrepancy in the evidence was such as he had never heard before. The value of the land by the claimants was just under 4000*l*., and by the company just over 1000*l*. But the remarkable circumstance was the supposed damage by the railway. On one side 10,500*l*. was claimed, and on the part of the company it was stated, that the works would increase the value. The jury awarded 1200*l*. for the land, and 1500*l*. for the damage, making 2700*l*.

JUSTICES' JUSTICE.—At the Spalding sessions last week, before the Rev. Edward Moore, chairman, and Mr. A. Howard, Mr. Thomas Parker, farmer, Whaplode, charged Francis Revell, aged sixty-two, with stealing a handful of wheat-ears from his field whilst the corn was in stock. It appeared that Sergeant Woods had observed the prisoner in the prosecutor's field picking up some corn, and he also took some out of a stock. The prisoner said he was merely picking up a few stray ears which had been passed over by the scythe. The corn, which was produced, was a handful of peculiar horned wheat. Revell is a man of respectable appearance, and has resided in the locality thirty-two years. Respectable witnesses came forward to say, that they had never heard any ill account of him before, and believed him to be an honest man. Convicted—ten days' imprisonment.—*Lincolnshire Guardian*.

DEATH OF JUDGE ELGEE.—We regret to have to announce the death of the Hon. Judge Elgee, which took place suddenly, from disease of the heart, on the 7th October last, at New Orleans. Judge Elgee was grandson of the late Archdeacon Elgee, of Wexford, and the only brother of Lady Wilde. Having settled many years ago in the Southern States, he rapidly acquired by his talents, and legal acumen, and great eloquence, a distinguished position at the American bar, and eventually rose to the bench. He had, however, retired from the practice of his profession, and at the time of the breaking out of the war was one of the wealthiest men in Louisiana. Only a year prior to that period he had invested 100,000*l*. in the purchase of an estate, the largest purchase ever made in Louisiana by a single individual. This plantation he called "Leinster;" for though so long and so far separated from his country, Judge Elgee never forgot his fatherland; and wherever a statue was to be erected, or a subscription for some good cause was set on foot, in Ireland, his generous aid was never wanting. Judge Elgee leaves an only son, who, before the war, was secretary of legation at Mexico, and is now aide de camp to General Lee.—*Wexford Constitution*.

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THE JURIST.

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A STARTLING novelty has been just propounded by Vice-Chancellor Wood, to which we desire to draw the earnest attention of such of our readers as are engaged in, or concerned with, joint-stock enterprises, and particularly those undertakings in which the liability is supposed by law to be limited. We allude to the learned Vice-Chancellor's decision in the case of *Betts v. De Vire and Others* (5 N. R. 165), to the effect, that the directors of a limited liability company are personally liable for the costs of a suit instituted by a patentee to restrain the infringement of his patent by the company. The charge in the bill against these directors was, that they had from time to time personally interfered in carrying on the affairs of the said company, and in the infringement of the letters-patent of the plaintiff, and had from time to time superintended and given directions to workmen and others employed in the manufactory of the said company for the making and manufacturing a metallic material substantially in the manner pointed out in the plaintiff's said specification; and the Vice-Chancellor is reported to have said that the directors, in what they had done, had acted with their eyes open, and that the fact of their having been agents of the company did not relieve them from the responsibility attending their conduct, and that they were personally liable to pay the costs of the suit.

We apprehend that this is a very novel doctrine. The Vice-Chancellor admits that the directors in their conduct were the agents of the company, and, therefore, the vexatious questions of excess of authority, and of the impossibility of agency for the purposes of fraud, do not arise. But it may, by the way, be observed, that in this case there could not have existed the smallest doubt as to the directors having acted within the limits of their authority; inasmuch as the company, of which they were directors, was expressly formed to work the patent (Winshurst's patent for metal foil and sheet-metal), the working of which constituted the infringement of Betts's patent; so that the very scope and aim of the association, of which the defendants were the managers, was to commit the alleged wrong of which the plaintiff (Mr. Betts) complained. Nor can it be for an instant, under these circumstances, contended, that the infringement of this patent was a fraud, within the meaning of the much-doubted axiom in *Dodgson's case* (3 De G. & S. 85), "that directors cannot be the agents of a body of shareholders to commit a fraud;" for even if the infringement of a patent were a fraudulent act, there was here clear authority to the directors to infringe; and all that they did, or were accused of doing, was, to carry out the affairs of their own company. If, therefore, this had been an ordinary joint-stock company, the question would have been, whether directors, acting within the scope of their authority, were personally liable for a tort committed by the company in the prosecution of the objects of their incorporation. That the company

itself would in such a case have been liable appears very clearly from the cases of *Hills v. The Liverpool United Gas-light Company* (9 Jur., N. S., part 1, p. 140) and *Green v. The London General Omnibus Company* (7 C. B., N. S., 302). The costs of this suit would be a debt of the company, and to make the directors individually liable for such a debt is directly contrary to the known law of corporations, and also directly at variance with the express provisions of the 3rd section of the 20 & 21 Vict. c. 14 (the Joint-stock Companies Amendment Act); the 6th section of the 22 Vict. c. 60; and the 48th section of the 25 & 26 Vict. c. 89. But, in this case, the position of these directors is still stronger. Their company is not only a company duly registered and incorporated, and one, therefore, whose corporate funds only are in the first instance liable to creditors' demands, but it is also a company with limited liability. Now, according to the 25 & 26 Vict. c. 89, s. 38, "in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member." And yet, in the face of this enactment, the Vice-Chancellor has held the directors of this limited company individually and personally liable for the whole costs of this suit. It is true, that in this suit the bill prayed a discovery as well as an injunction, and that, therefore, in accordance with the common Chancery practice in bills of that nature, the directors were individually made defendants to the suit, as well as the corporate body of which they were the agents and managers; but it will hardly be contended, that this solitary fact conferred on the Vice-Chancellor the jurisdiction he has assumed.

On the contrary, on the principle of "*Expressio unius est exclusio alterius*," the 69th section of the Companies Act, 1862, which provides, that in actions or suits brought by limited companies, security for costs may be required and ordered, where there is reason to suppose that the assets of the company will be insufficient to pay their opponents costs in case of his success, seems to shew that the Legislature were not similarly disposed to aid plaintiffs in actions or suits brought against such companies, and militates forcibly against the Vice-Chancellor's holding.

It should be further remembered, that the extent of the personal liability of directors is defined by the statute of the 25 & 26 Vict. c. 89. Any director acting in contravention of the 25th section, will incur the penalty of 5*l.* a day, and similar penalties are imposed under the 27th, 32nd, 34th, 42nd, 43rd, 44th, 46th, 53rd, and 54th sections, for offences by directors against the respective provisions of those sections; whilst by the 42nd section, directors are made personally liable for the amounts of any bill, note, or cheque issued in an unauthorised form; and a little liability ensues to the directors equally with private members under the 48th section, if the business of the company is attempted to be carried on by less than seven members. The decision of the Vice-Chancellor has, however, added a new section to the statute; and, under the circumstances, we are not surprised to learn that these directors have already given notice of appeal to a higher tribunal.

We have received from Dr. De Meschin a long and learned vindication of his proposition (*ante*, p. 454)—that “every decree and judgment, even though unrecorded and entirely forgotten, has the force and effect of law, and is binding on the whole nation”—which we regret that we cannot insert at length. It will probably satisfy our correspondent—as it will us—to give from his letter the following explanation at once of the proposition, and of the reference to Lord St. Leonards.

“I quoted Lord St. Leonards, not as an authority, but as a signal example. What are the facts? This eminent peer tells us, that in writing the ‘Law of Property as administered by the House of Lords,’ 1849, ‘he had at his command some materials which greatly aided him. Whilst at the bar he retained all the printed cases in appeals in which he was counsel, with his own notes and the notes of the arguments. From this source principally he has been enabled to add to the cases not at present reported between 1821 and 1826. Where a case which he argued is not reported elsewhere, or the reports of it do not state by whom it was argued, the fact that he was one of the counsel is mentioned, as an intimation that the writer possessed means of knowledge beyond the mere printed case, and besides the report.’

“(Parenthetically, I may remark, that reports of the last tribunal resort, which need such supplementing, are open to the greatest censure).

“But to return, does not this bear out my ‘remarkable proposition?’ Here, we have decisions of the highest Court ‘unrecorded and entirely forgotten’ for quarter of a century, and then awaking from their long sleep to work (as far as they were operative) the worst of revolutions—a revolution of property; and so long as each decision is not recorded in some such way as I have proposed, this must constantly occur.”

AMENDMENT OF THE LAW OF EVIDENCE.

THE following paper was read before the Jurisprudence Department of the National Association for the Promotion of Social Science, on the 21st November, 1864, by Alfred Waddilove, D.C.L., “On the Amendment of the Law of Evidence, in order to admit the Testimony of Parties in all Civil Suits, and of Defendants in Criminal Trials.”—

“Amid the many improvements in the administration of justice during the last thirty years, none has tended more towards truthful and impartial decision than the removal of restraint upon testimony. ‘Evidence is the basis of justice; to exclude evidence is to exclude justice.’ So wrote that eccentric but truly philosophical inquirer, Jeremy Bentham—a zealous law reformer in days when reform, whether legal or political, was viewed in a very different light to that in which it is regarded now.

“The admission and exclusion of evidence are questions which concern not only those who study and practice law, but they affect the interests of the whole community; our property, our liberties, and our lives may be involved in the result. It is, then, with no apology that I ask this department to consider whether some of the restraints which still circumscribe the reception of evidence should not be at once removed.

“According to Mr. Pitt Taylor, in his valuable *Treatise on Evidence*, there are seven classes of persons still incompetent to give evidence:—First, parties to any suit in consequence of adultery; secondly, parties to any action for breach of promise of mar-

riage; thirdly, persons charged with an indictable offence, or any offence punishable on summary conviction, as to their giving evidence on oath for or against themselves; fourthly, husbands and wives of all persons who are defendants in any criminal proceeding; fifthly, the wives of supposed paramours who are made co-respondents in suits for dissolution of marriage, or for damages by reason of adultery; sixthly, in cases of high treason and misprision of treason (other than such as consists in injuring or attempting to injure the Queen’s person), those persons who are not included in the list delivered to the defendant pursuant to statute; and, lastly, persons insensible to the obligation of an oath. All these restraints I would remove, save the two last. The propositions, then, that I would advance for consideration are four.

“1. That persons charged with a criminal offence should, on their trial, be permitted, if they think fit, to tender their own evidence, on oath, in order to clear themselves of the charge against them, subject to their cross-examination.

“2. That husbands and wives should be competent and compellable to give evidence for or against each other, in criminal as well as in civil cases.

“3. That all parties, including husbands and wives, to a suit of whatever nature, should be competent and compellable to give evidence bearing on the issue, for or against each other.

“4. That judges should be empowered to summon before them any person to give evidence they may think necessary, whether in a civil case or criminal trial; and that they may be empowered to adjourn the hearing of the case for that purpose. But before I touch upon each of these special considerations, I will in a few words trace our gradual progress towards our present improved state of the law of evidence; our old rules of evidence were purely judge-made law.

“The main grounds of exclusion were interest and crime. It was thought that if a person had a pecuniary interest in the result of a trial, his evidence was not trustworthy: and here allow me to mention an incident connected with this question of interest. A witness was produced in a civil trial; he was asked by the adverse counsel whether he would not benefit by a verdict in favour of the party whose witness he was; he replied that he should, to the extent of 10*l*. That, as the law then stood, rendered his evidence inadmissible. The counsel on the other side (Sir William Follett, I think) took from his pocket a 10*l*. note, and handed it to the witness, saying, ‘Now you have no interest.’ He was then allowed to give his evidence. The exclusion on the ground of improbity (the word is Bentham’s, and seems to me to convey the best idea of the law’s intention), want of honesty, implied a want of truth. Thus, if any person had been convicted of a crime, he was treated as not trustworthy, but only so long as he was undergoing his sentence. Thus, a prisoner was not to be believed when suffering punishment for his offence; but when the term of his punishment had expired, he was deemed capable of speaking the truth.

“It was not until the year 1833 that any attempt was made by our Legislature to control the admission or exclusion of evidence. Up to that time, the rules of evidence were for the most part based on the dicta of the judges, frequently of a very unsatisfactory kind; and although many of them in more recent times, and chief among them Lord Mansfield, saw and expatiated on the failure of justice from the rejection of evidence, and although he did much towards introducing more rational rules, so that, as Lord Campbell writes of him, ‘he found the law of evidence of brick,

and left it of marble,' still, so averse were our judges and lawyers to legal reform, that they were content to witness the evil without an effort to remedy it. 'Stare super antiquas vias,' was their motto. The act passed in that year 1833 (3 & 4 Will. 4, c. 42), intitled 'An Act for the further Amendment of the Law, and the better Advancement of Justice,' provided, that in order to render the rejection of witnesses on the ground of interest less frequent, if any witness were objected to as incompetent, he should, nevertheless, be examined under certain conditions. As that act was virtually superseded by that known as Lord Denman's (6 & 7 Vict. c. 85), passed on the 22nd August, 1843, I pass over those conditions, and at once cite the important declaration of this later act, viz. 'That no person offered as a witness shall be hereafter excluded, by reason of incapacity from crime or interest, from giving evidence either in person or by deposition;' and it continued, 'that notwithstanding such person may have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or inquiry, or may have been previously convicted of any crime or offence, he should still be an admissible witness.' The act, however, expressly excluded the parties to a suit, together with the husband or wife of such party. When, however, three years afterwards, the County Court Act was passed, parties to suits in those courts, together with their husbands, wives, and all other persons, were rendered competent witnesses, no evils were found to arise from these concessions; the much dreaded perjury was not found to be more rife than under the old exclusive system; but it was not until a probation of six years that the Legislature was induced by our president, Lord Brougham, to extend the privilege conceded to the county courts to all other civil tribunals. Lord Brougham, in 1851, introduced a bill, which subsequently passed into an act (14 & 15 Vict. c. 99), whereby parties to suits, and the persons in whose behalf any suit or action was brought, were rendered competent and compellable to give evidence therein. That act, however, contained those exclusions of evidence which have induced me to draw your attention to them:—"No person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, was to be competent or compellable to give evidence for or against himself; nor were husband or wife in any criminal proceeding to be competent or compellable to give evidence for or against each other; nor were the parties in any suit instituted in consequence of adultery, or in any action for breach of promise of marriage, to be admitted as witnesses therein." In 1853, Lord Brougham again induced the Legislature to widen the law of evidence as left by the act of 1851. By the 16 & 17 Vict. c. 83, the exclusion of the evidence of husband and wife, when opposed to each other, was abolished as far as civil proceedings were concerned; but in criminal proceedings, and in any proceeding instituted in consequence of adultery, they were still declared to be neither competent nor compellable to give evidence. Thus, the law of evidence now stands in these particulars, and thus it is now administered in our courts. The changes that have taken place are admitted by all to be improvements, and I would ask whether the further relaxations I have suggested should not be carried out.

"To begin, then, with my first proposition: 'That persons charged with a criminal offence should, on their trial, be permitted, if they think fit, to give their own evidence, on oath, to clear themselves of the charge against them, subject to cross-examination.' I am aware that this is no novel proposition. It has already been brought before this society on two occa-

sions. A paper was read at the social science meeting in Glasgow, in 1860, by Mr. Pitt Taylor, the learned author of that work on evidence which is deservedly treated as the standing authority on the subject, 'on the expediency of passing an act to admit defendants in criminal courts, and their wives and husbands, to testify on oath.' In that paper he strongly urged the justice and policy of so doing, and combated the arguments of those opposed to the change. Another paper was read, 'on the propriety of admitting the evidence of accused persons on their trial,' by Mr. Mackenna, of the Irish bar, at the Dublin meeting in 1861. He expressed himself adverse to the propriety of so doing. His chief objection was, that it would tend to the prejudice of a prisoner if he tendered his evidence, that he might under cross-examination betray himself; and that it were better he should be compelled to remain silent. It is, however, satisfactory to find, that in the discussion which followed that view was not generally adopted. Under the present rule, which precludes a person charged with a criminal offence from being heard on his oath in his defence, a flagrant injustice may be and often is committed. In some cases it is in the power of a complainant to proceed against an alleged offender either by a criminal or civil proceeding. He often selects the former, because in that case the defendant cannot be heard in his defence, whereas in a civil court he is allowed to rebut or explain away the charge on oath. Ought it to be left in the power of any man to select a criminal tribunal in order to silence his adversary? I feel that I cannot better support the change I am advocating than by quoting the words of Mr. Joseph Napier (the ex-Chancellor of Ireland), in his address to the jurisprudence department of this society on that occasion.

"Although parties in a civil suit are competent and compellable to give evidence in that suit, an accused person cannot be called as a witness in his own behalf in a criminal proceeding. An accomplice in a murder who becomes an approver, interested in earning a full pardon, is a competent witness. The party accused is, indeed, permitted to make a statement, but he cannot maintain it by his oath, nor submit it to the test of cross-examination; so that if it be true, its value is unjustly depreciated. There is no case, I am confident, in which an innocent man who is put upon his trial does not feel the injustice of the existing law. There are cases in which no one but the accused could expose the falsity of the accusation; and there are cases also in which the accusation would not have been made, not, perhaps, even contemplated, but for the very rule which may screen it from exposure.' If Müller had been allowed to tender himself as a witness in his own behalf, and if he had done so, and had made the statements he made after his conviction, their veracity would have been tested, and they would have had their due weight on the question of his guilt, and we should have been spared the unseemly comments on the verdict, as also the injurious efforts of those who endeavoured to obtain a reprieve.

"The second proposition I would advance is, 'that husbands and wives should be rendered competent and compellable to give evidence for or against each other in criminal as well as in civil cases.' This question was also brought before this society, in the paper of Mr. Pitt Taylor to which I have alluded. He gives some brief but cogent answers to the objections raised against the admission of married parties as witnesses for or against each other in criminal trials. Although what I may add to what he has advanced on the subject may lack weight in comparison, I will venture to give some additional reasons why this restriction on evidence should be no longer enforced.

"The regard for the affection, sympathy, and confi-

dence which ought to exist between husband and wife, has prompted it, and we cannot but respect that consideration; it would be a painful thing to witness the conviction of a husband or wife by the evidence of either, but we are often compelled to witness the proof of the guilt of a parent by the evidence of the child, or the child by that of the parent, a violation of our feelings no less revolting. Again, it may be said that a desire to screen the husband or wife may induce perjury; the same may be said in civil cases, and if the fear of encouraging perjury is to prevail over the desire to elicit truth, we must revert to our old practice, and exclude the testimony of parties in their own cases, as also those who have an interest in the result. But there is another view of the question; the husband or wife may be the only person capable of establishing the innocence of either when accused. In trials for bigamy, the woman with whom the second marriage is had is a competent witness; she may in fact be a legal wife, since the first marriage may be invalid, or if not, she may be as much attached to the prisoner as if she were. Again, in such trials, the legal wife is not a competent witness; she cannot be heard either to prove or disprove the charge, and thus justice often miscarries.

"In common cases of assault, married parties are sentenced to fine and imprisonment on the testimony of each other, and no objection is raised. In suits for necessities supplied to the wife, if the marriage be denied, their testimony will be received; again, in courts of equity, they may depose in support of their several adverse claims. In the Divorce Court, both or either of them is competent and compellable to give evidence of cruelty or desertion, or of the misconduct provoking them, although the question of adultery may also be in issue. Again, in suits for nullity of marriage, the quasi husband and wife are competent and compellable witnesses, and have been heard for and against each other, although it was obvious that revolting disclosures must be made; and, lastly, the judge of the Divorce Court has the power which he has frequently exercised of calling the petitioner before him to test the sincerity of his proceedings and his conduct towards his wife. It requires, then, but a step further in the path of justice to render married parties competent and compellable to give evidence, whether in favour of themselves or against each other, in every issue that can be raised.

"My third proposition is, 'That parties to a suit, of whatever nature, should be rendered competent and compellable to give evidence for or against each other.' Lord Denman's Act of 1851, contained the proviso (insisted on, as is said, by the then Lord Chancellor Truro), 'That parties to a suit instituted in consequence of adultery, or in any action for breach of promise of marriage, should not be admitted as witnesses therein.' It was, no doubt, a regard for morality, and a desire to prevent exposure and also perjury, which prompted the adoption of these provisions, added to the fear of losing the enactment altogether if they were resisted. It was said, in support of them, that a wife charged with adultery should not be compelled to declare her own infamy; 'no person is bound to criminate himself,' is the lenient but just maxim of English jurisprudence; but, on the other hand, it was said that she might be the only person capable of explaining away the suspicions against her, of establishing her innocence, and that the latter consideration ought to outweigh the former. Again, a husband may be the only person capable of proving his wife's infidelity; and so strongly has the present judge of the Divorce Court felt this, that he has not hesitated, notwithstanding the proviso I have named, to obtain from a husband himself, in such a case, the

proof of his wife's guilt. 'The 43rd section of the Divorce Act (20 & 21 Vict. c. 85), empowers the Court to examine the petitioner, but it provides that he shall not be bound to answer any question tending to shew that he or she has been guilty of adultery; but it is silent as to his or her answering any question tending to shew that the respondent has been guilty of adultery.' By the act (27 & 28 Vict. c. 54), for improving the jurisdiction of the Ecclesiastical Courts in Ireland, passed last session, this power of summoning witness before it is given to the Court.

"To shew the anomalies that may arise from excluding the evidence of parties to suits instituted in consequence of adultery, I will relate what actually occurred in a well-known case (*Evans v. Robinson*, 1857) only a few years since. A. brought an action against H. for criminal conversation with C., A.'s wife—not one of those parties could be examined as a witness in that trial. A., at the same time, in order to obtain eventually an act of Parliament to set aside his marriage, instituted proceedings in the Ecclesiastical Court for a divorce a mensâ et thoro. He and his wife being parties to the suit, their evidence could not be received, but that of B., the alleged paramour, could be, and was, received. A. then indicted B. for perjury committed in that suit. On his trial, B.'s mouth, as defendant—as the person charged with a criminal offence—was closed. But A., the prosecutor, was a valid witness, as also his wife, and she was examined for the defence, and denied that any criminal intimacy between her and B. had ever taken place, and thus supported the truth of his evidence. The Divorce Court was then established, and A. petitioned for a divorce. B. was necessarily made a co-respondent; then A., B., and C. were all parties to the suit, and the evidence of each was again inadmissible.

"In a case very recently before the Divorce Court (*Bancroft v. Bancroft*, D. C., Nov. 16), a wife petitioned for a judicial separation by reason of her husband's cruelty; he replied by charging her with adultery. In that suit the wife was a competent witness, and the alleged adulterer was also produced to sustain the adultery charged. The jury found that the cruelty of the husband was established, but that the adultery of the wife was not. Whereas, in a cross petition by the husband, charging his wife with adultery, neither the wife's testimony nor that of the alleged adulterer, the co-respondent, could be received. The Court was moved, on the part of the wife, to allow the verdict in the first suit to be pleaded, in order to supply the want of proof in the second suit arising from the incompetence of the witnesses, but the Judge Ordinary (Sir J. Wilde) refused the motion, saying, 'That the law distinctly declared that the adultery of the wife should be twice tried, because in one case it should be tried by one species of evidence, and in the other by another and a different species of evidence. In the suit by the wife, both she and the alleged adulterer were competent witnesses, and in the suit by the husband they were not. All the Court could do was to administer the law as it existed. The suit must therefore proceed. It is no answer to the petitioner that the wife (the respondent) had obtained a verdict upon evidence which was not admissible in this suit.'

In the case of *Codrington v. Codrington and Anderson* (Div. Court, Nov. 17), the rule excluding the evidence of the parties to the suit has been loudly complained of by the counsel both for the petitioner and

* The 24th section of the Probate Act (20 & 21 Vict. c. 77), runs thus—"The Court of Probate may require the attendance of any party in person, or of any person whom it may think fit to examine, in respect of matters or causes testamentary."

respondent. In a well-known case before the Divorce Court (*Robinson v. Lane*, 1 Swab. & T. 388), shortly after its being established, an attempt was made to examine the co-respondent to prove his own and the wife's (the respondent's) innocence; of the three judges presiding (the full court) one (Mr. Justice Wightman) was in favour of his being dismissed from the suit, in order that he might then be an admissible witness, as the evidence produced (the wife's written confessions) did not criminate him; but the two other judges were of a different opinion. The case was adjourned until a Divorce Court Amendment Act, then in progress, passed, in which a clause was inserted enabling the Court to dismiss a co-respondent from the suit should the evidence not affect him.

"This is a slight relaxation of the rule which excludes the evidence of a co-respondent, but it is obvious that it must be a very exceptional case in which, during the progress of the inquiry, it may transpire that the evidence does not directly affect a co-respondent. This relaxation is, then, of no very great value, and the rule still practically exists, that no party to a suit instituted in consequence of adultery is an admissible witness. It is true that the judge of the court may, *ex proprio motu*, examine the petitioner; but he can put no question, either to him or her, to elicit whether he or she has been guilty of adultery. Wherever, however, desertion or cruelty is alleged, whether coupled with adultery or not, either party is competent to give evidence on those questions where the suit is for dissolution of marriage; but, strange to say, where a judicial separation only is sought, on the ground of adultery coupled with desertion or cruelty, in that case, I repeat, strange to say, the evidence of the parties is still excluded. This, no doubt, was an oversight on the part of the Legislature. In actions for breaches of promise of marriage, the woman, the plaintiff, would be the most important witness in support of her case; in an action for damages by reason of a breach of contract, the evidence of the plaintiff is received, and why not in an action for breach of promise of marriage, which is, in fact, a breach of contract? On the other hand, the defendant might explain away all or much that was adduced to fix him with the promise. In actions for seduction, and in suits for nullity of marriage, the woman gives evidence subject to cross-examination, at times of a very disagreeable and painful nature. As bearing on this question, in order to shew an evil of the present law, I will narrate what took place in a recent trial. An action was brought by a lady for breach of promise of marriage, and also for a breach of contract, inasmuch as the defendant had promised her, upon her giving up to him certain letters, which contained language amounting to a promise of marriage, that he would give her a certain sum by way of annuity. She gave up the letters, but the defendant refused to give her the sum he had promised her. It was contended that the plaintiff could not be examined as a witness to prove the breach of contract, as a breach of promise of marriage was also in issue. The breach of promise was thereupon abandoned, but it was still contended that the action was virtually for breach of promise of marriage. The judge, however, before whom the case was tried, would not take that view, saying, the only issue remaining was the breach of contract. The counsel for the defendant then threatened a bill of exceptions, but the case was soon settled by the withdrawal of a juror. Had it not, an intricate point might have been raised, as to whether the plaintiff was a competent witness or not.

"My last proposition is, 'That judges should be empowered to summon before them any person to give evidence they may think necessary, whether in a

criminal trial or civil case, and that they should be empowered to adjourn the trial or case for that purpose.' It not unfrequently occurs, that a witness who might give important testimony touching the facts or merits of a case, is designedly kept back by a plaintiff or defendant, who knows that if that person were called to give evidence it would weaken if not destroy his case. If the object of judicial inquiry be not to give a triumph to either party, but to arrive at truth, it is desirable that every means should be adopted to that end, that the judge and jury (if there be one) should be informed of every fact and circumstance which may conduce to a just decision; but if a witness who can throw light on the question in issue is purposely kept back, that object is necessarily defeated. Whereas, if the judge had the power of summoning any person before him whose evidence he conceived might be of value, and were enabled to adjourn the case for that purpose, if the witness were not at hand, the ends of justice would not be so often defeated, nor should we hear counsel complaining, whether honestly or not, of important testimony being withheld for fear of weakening his opponent's case. In the case of *Gedney v. Smith*, recently before the Master of the Rolls relative as to the birth of a child, if the accoucher who was represented to have been present at the alleged birth had been produced as a witness, at the instance of the judge (neither plaintiff nor defendant being willing to do so), a few brief questions would have put an end to the inquiry. An inconvenience, however, naturally suggests itself here, viz the adjournment of the case. Where the trial takes place before a judge without a jury no difficulty can arise.

"Adjournment for further evidence is of frequent occurrence in the county courts and in the Divorce Court, under the 44th section of the 20 & 21 Vict. c. 85; the case of *Codrington v. Codrington and Anderson* was adjourned from July last for further evidence, and is now before the Court; and this, although there was a jury in the case; and it was satisfactory to find that the same jury would be reassembled. In the Ecclesiastical Court, the maxim of the civil law, '*Causa nunquam concluditur contra judicem*,' was often acted on; where new facts were discovered, further evidence was received; but I must admit, that where a jury is concerned, it might be inconvenient, and sometimes impracticable, to secure the attendance of the same jury at the rehearing of the case. In criminal trials, a prisoner is oftentimes prevented from producing evidence which might exculpate him, by want of means or other causes. At the Middlesex Sessions of August last, a man was tried for robbery; the counsel for the defence commented on the hardship of the law, which did not permit the prisoner to give his own account of the transaction on oath, with the safeguard of examination; the prisoner was found guilty, and then he was asked, as if in mockery, what he had to say; he protested his innocence, and added, that if a witness whom he named could have been produced, he could have cleared himself of the charge; the judge replied, 'I am not going to try your case again; if you have anything to say in mitigation of punishment, say it.' The prisoner could only repeat, 'that he was innocent; that he denied what the prosecutrix had sworn to; and that if he were put back, he would endeavour to find the gentleman he had named.' The judge, in consideration of his good character, sentenced him to nine months' imprisonment, with hard labour. I have said, a prisoner is often prevented from procuring evidence for want of means; this raises a painful and very difficult question. It is often said, with more point than truth, that there is one law for the rich, and another for the poor—let us endeavour to prevent this opprobrium being cast upon

English justice. Might not something be done whereby a poor man might be assisted in procuring evidence at the public cost to prove his innocence? If we do ever have a Minister of Justice, as I trust we some day shall have, let us hope that his title will not be merely nominal, and that his attention may be turned to this subject. Before I conclude, I would say one word more on the question of adjourning criminal trials for further evidence. The theory of a criminal trial by jury is, that the jury having charge of the prisoner cannot be discharged, or even separated, until they have given their verdict, or satisfied the judge of their inability to do so. If this is imperatively and absolutely necessary, no criminal trial could be adjourned for any length of time. But let me ask, is it imperatively necessary that this theoretic custody should be retained?

"Another objection may be urged, viz. that a person charged with an offence has a right to have the charge against him established at once; that the evidence is not to be produced piecemeal; that if the trial might be adjourned, those for the prosecution would do so, if they found their chain of evidence incomplete; but I would answer, that it should only be done when there was, to the judge, an apparent justifiable substantive ground for it, as is the case when a trial is adjourned before it commences. It is true, it may tend to prove guilt; but, on the other hand, it may tend to prove innocence. If we are sincere when we say, 'Better let the guilty escape, than that the innocent should suffer,' then I demand, in the spirit of that maxim, that we should act up to what we profess. I have now briefly, but I fear imperfectly, expressed the views that I, in common with some others, entertain on the present state of our law of evidence. I trust it is a subject not unworthy the consideration of this society; I trust it will make some effort towards its amelioration; in so doing, it will furnish another endeavour on our part towards the amendment and improvement of our laws, and thus we shall, as I conceive, confer an essential benefit on the community at large."

Mr. Charles Hall has been appointed one of the conveyancing counsel of the Court of Chancery, in the place of Mr. Joshua Williams, resigned. It would be well if in every case the Lord Chancellor had exercised his patronage so unexceptionably as in the appointment of Mr. Joshua Williams and his able successor.

NATIONAL ASSOCIATION FOR THE PROMOTION OF SOCIAL SCIENCE.—The fourth meeting of the Department of Jurisprudence and Amendment of the Law will be held at 1, Adam-street, Adelphi, on Monday next, the 19th instant, when a paper will be read by Mr. Serjeant Pulling, intitled "A Proposal for Amending the Laws affecting Jurymen." The Hon. George Denman, Q. C., M. P., will take the chair at eight o'clock.—The Standing Committee of the Department will meet at seven o'clock.

MINUTES OF THE LAST MEETING.—Monday, Dec. 5, 1864.—The Attorney-General in the chair. The minutes of the last meeting were read and confirmed. Mr. F. S. Reilly read a paper, intitled "Observations on a Digest of Law, with reference to the Address delivered at York by the President of the Department." After some observations from Mr. Symonds, it was moved by Mr. Edward Webster, and seconded by Mr. Macqueen, Q. C., "that Mr. Reilly's paper be printed, and circulated among the members." A discussion followed, in which Mr. Waterhouse, Dr. Waddilove, Mr. Hastings, Sir Eardley Wilmot, Mr. R. Wilson, Mr. Daniel, Q. C., and the Chairman took part, after which the resolution was put and carried.

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THE JURIST.

LONDON, DECEMBER 24, 1864.

THE judgments of the barons of the Exchequer, in the recent case of *Re Domingo Capdevielle* (10 Jur., N. S., part 1, p. 1155), express so much dissatisfaction with the judgments of the Lords Justices in the case of *Re Wallop's Trusts* (Id. 328), that we cannot help thinking it would have been better if they had pronounced judgment according to their own opinions, and so left it to the officers of the Crown to obtain the opinion of the Court of final appeal on the question, whether the rule, "*Mobilia sequuntur personam*," does not apply to the Succession Duty Act as well as to the Legacy Duty Act. The Lord Chief Baron, in his judgment, remarks, that the Court which decided the case of *Re Wallop's Trusts* is not a court of co-ordinate jurisdiction with the Exchequer in matters of revenue; and it is further to be observed, that although one of the Lords Justices expresses a decided opinion on the question, it is impossible to say on what grounds the opinion of his colleague was based; and, moreover, the expression of opinion was not necessary for the decision of that case.

The difference between the liability of the estate of a foreigner to legacy duty and to succession duty must turn upon a difference in the language of the statutes which respectively create those duties; but where is that difference? The barons of the Exchequer have not been able to discover it. Thus says Baron Bramwell—"But then it is said, that if he escapes the legacy duty, he comes within the succession duty; and cases are cited accordingly. And although I have great faith in, and respect for, the authority of the judge who pronounced an opinion in accordance with that view (it certainly was not very actively concurred in by his learned brother), I confess I have a great difficulty in following that authority, for that reason, and it does seem to me, that whatever arguments can be used for the purpose of shewing that the Legacy Duty Act must be restricted to persons and things the subject of British legislation, to the extent of exonerating parties in such cases as this from the legacy duty, are equally applicable to the Succession Duty Act; and the Succession Duty Act equally requires a restriction in its construction with the Legacy Duty Act, because everything that is true of the one is, to my mind, true of the other. I cannot see why the same reasoning should not apply to succession duty that applies to legacy duty." We believe that the difficulty which the learned baron felt in not applying the same reasoning to one duty as to the other is felt by most members of the profession, and that the soundness of the decision in *Re Wallop's Trusts* is very generally doubted.

The Chief Baron expresses himself even more strongly:—"If I were to hold the domicil French, I personally should have considerable difficulty in deciding that the property was liable to *our* succession

duty; but I so far respect the opinion of the learned persons who gave the judgment in question, that I should be disposed, for my own part, to adopt their decision, though I have very great doubt whether it be the correct one." There is much force in the term "*our* succession duty," in the judgment of the Chief Baron, for it suggests the argument, that the same foreigner's estate, which is chargeable under the Succession Duty Act of this country, may also be liable to a similar duty by the laws of his own country. Should the rule, "*Mobilia sequuntur personam*," be applicable by that law, the estate of a person so situated is liable to a double duty, and to be subject to very large deductions. We cannot, therefore, but think that the Court of Exchequer, entertaining these opinions, and, as its Chief remarks, not considering the Lords Justices as a Court of co-ordinate jurisdiction, and being peculiarly the Court to decide upon questions affecting the revenue, might have acted upon their own opinions, and reversed the decision. (*Re Wallop's Trusts*). It would, then, have been for the Crown to obtain the judgment of the House of Lords, and so settle the question finally. In a later case (*The Attorney-General v. The Count and Countess Blucher de Wahlstaff*, 10 Jur., N. S., part 1, p. 1159), the Court of Exchequer adhered to their previous decision on the question, and therefore we can only hope that a case will soon occur in which the amount of duty in dispute will render it worth the while of the representatives of the foreigner to appeal to the House of Lords. There is a well-established principle, that the British Legislature only legislates for British subjects, including in the term "subjects" foreigners resident in this country, and availing themselves of the benefit and protection of its laws. Foreigners not so situated, as they have not the benefit, ought not to be liable to the burthens which those laws create.

This principle, though the question arose on a different subject, was fully considered by the House of Lords in the case of *Jeffrey v. Boosey* (4 H. L. C. 815). And the Lord Chancellor, in pronouncing his judgment (p. 955), thus expresses himself:—"Prima facie the Legislature of this country must be taken to make laws for its own subjects exclusively; and where, as in the statute now under consideration, an exclusive privilege is given to a particular class at the expense of the community, the object of giving that privilege must be taken to have been a national object, and the privileged class to be confined to a portion of that community for the general advantage of which the enactment is made. I include within the word 'subjects' all persons who are in the Queen's dominions, and who thus owe her a temporary allegiance." And Lord St. Leonards lays down the rule still more broadly (p. 980):—"I think we may fairly consider that it ought not to be denied that, speaking generally, an act of Parliament, having a municipal operation, cannot be held to extend prima facie beyond our own subjects." It is true, that in the case of *Jeffreys v. Boosey*, the foreigner was claiming the benefit of a British act of Parliament; but if foreigners are not entitled to the benefits, they cannot, as we have already observed, on any principle of justice, be liable to the burthens which

the Legislature imposes; unless the statute contains the most express language to that effect.

It seems so harsh upon foreigners that their estates should be liable to our succession duty, that, if the decision in *Re Wallop's Trusts* be finally upheld, we should hope an act would be passed to relieve them. The Succession Duty Act is grasping enough in its provisions and in the wide construction which has been put upon it, without this further discredit being attached to its name.

THE verdict of the jury on the second trial in the Divorce Court, of the case of *Stone v. Stone and Appleton*, suggests some grave considerations. On each occasion the trial was one of several days duration, the first trial being before the late Sir Cresswell Cresswell. It was clear that that learned and able judge was perfectly satisfied with the first verdict, inasmuch as he strenuously differed from the other members of the full court as to the propriety of granting a new trial; and yet, when a new trial is granted and takes place before a very intelligent and patient jury, the former verdict is reversed. This, no doubt, is an event which occasionally happens in the common-law courts, but in a case for a dissolution of marriage, the question is suggested whether the judge should not direct the jury that they ought to require evidence almost conclusive before they find a verdict which may expose a woman to shame and misery for the rest of her life. With the most sincere respect for the conscientiousness and great powers of the late judge of the court, we are disposed to think that he was too apt to infer adultery from levity of conduct in a woman, and that he disregarded what most persons believe to be the fact, that many women will be light and indelicate in their conduct, and yet, from conscientious scruples or fear of consequences, stop short of the great offence. In the case of *Stone v. Appleton*, had not the friends of the lady had a strong conviction of her innocence, and stoutly supported her in her struggle to preserve her honour, she would have been stamped as an adulteress for life; as it is, when the case is submitted to a different judge and jury, she comes out of the court rescued from disgrace. We rejoice at the result of this second trial, for we think it will incline juries to sift more thoroughly the evidence laid before them, and not to find that adultery has been committed where the facts can be reconciled with innocence. The Scotch verdict of "not proven," where their minds are in doubt, is particularly applicable to such a case.

SOCIAL SCIENCE ASSOCIATION.—LAW AMENDMENT DEPARTMENT.

THE fourth meeting of this society was held on Monday last at No. 1, Adam-street, Adelphi. The Hon. G. Denman, Q. C., M. P., in the chair.

Mr. Serjeant Pulling read a paper, intitled "A Proposal for amending the Law affecting Jurymen." The qualification of jurors had undergone a gradual change

without anything like a corresponding advantage to the public. The standard of qualification was now below what was formerly presumed, and a very small proportion of those who now act as jurymen were assessed at even 100*l.* a year. At present an inferior class was included in the jury list, and persons were excluded who were by education and intelligence qualified to discharge the duties of jurymen. If every person possessed of 100*l.* a year were included in the jury book it would be a great improvement. The present state of the law of exemption required amendment, and the principle of exemption was productive of much abuse. The exemption from serving on juries extended in this country to several classes, while in France the exemption only extended to the ministers of religion. Persons above sixty years old were exempted in this country; and the consequence was, that a number of capable men between sixty and seventy were relieved from serving on juries. The jurors' book should be purged of all persons convicted of fraud or crime. He proposed that a conviction for any criminal offence should prevent persons from acting as jurymen for ten years; and he would make it an indictable offence for any such person to act as a jurymen within the time he had mentioned. If the jurors' book were reformed in the way he proposed, special juries would be less frequently demanded. An allowance was made to special jurors, but none to common jurors; and that was not fair. While ample compensation was given to witnesses, none were given to common jurymen, and that was an injustice that ought to be remedied. There should be also a proper system of registration of jurymen; and without that all other reform would be ineffective. The jury list should be revised, as the voters' list was revised, and the revising barrister should be invested with power to bring all necessary parties before him, to impose penalties for giving false information, and, in the case of officials, for neglect of duty. He should strike out of the list all persons not qualified or who were exempt; and set forth, in separate columns, those who were qualified to serve as grand jurors and on special juries. He should forward the lists to the clerk of the peace and town clerk, and the lists should be printed and circulated, under the same regulations as the lists of voters were printed and circulated. The rota for service should be settled by the revising barrister, and the jurymen should be summoned according to that rota. Any one who did not give a lawful excuse for not attending should be subject to penalties, to be increased in case of a second default. In conclusion, he proposed that the jurors' book should contain the names of all persons possessed of 100*l.* a year from any source; that the law of disqualification and exemption should be amended; that applications for special juries should be less frequently made; that an allowance should be made to jurymen; that there should be a more perfect system of registration of jurors and revision of the jurors' lists; and that there should be a rule to compel the attendance of jurymen, and thus divide the labour amongst them.

In answer to some remark,

Mr. Serjeant Pulling said, he would repeal the law that gave a general exemption to barristers and surgeons, and give a partial exemption to those only whose professional avocations at the time they were summoned prevented them from acting as jurors.

After some discussion,

The Chairman said he would be sorry to see any ill-advised or rash legislation on the subject, because, on the whole, the system worked well, and the work was cheerfully done by the jurors. A great deal, however, might be done by improving the ventilation of the jury-rooms, and increasing the accommodation af-

ferred to the jurors; thus shewing that they were regarded as persons who attended to discharge most important duties.

On the motion of Mr. Daniel, Q. C., seconded by Sir Eardley Wilmot, it was resolved, that the paper be received and printed.

Court Papers.

EQUITY SITTINGS, HILARY TERM, 1865.

Before the LORD CHANCELLOR.

At Lincoln's Inn.

Wednesday, Jan. 11	{ Appeals Motions & Appeals in Bankruptcy.
Thursday	{ Petitions and Appeals.
Friday	{ Appeals.
Saturday	{ Appeals in Bankruptcy and Appeals.
Monday	{ Appeals.
Tuesday	{ Appeals.
Wednesday	{ Appeals in Bankruptcy and Appeals.
Thursday	{ Appeal Motions and Appeals.
Friday	{ Appeals.
Saturday	{ Appeals in Bankruptcy and Appeals.
Monday	{ Appeals.
Tuesday	{ Appeals.
Wednesday	{ Appeals in Bankruptcy and Appeals.
Thursday	{ Appeal Motions and Appeals.
Friday	{ Appeals.
Saturday	{ Appeals in Bankruptcy and Appeals.
Monday	{ Petitions and Appeals.
Tuesday	{ Appeal Motions and Appeals.

Before the LORDS JUSTICES.

At Lincoln's Inn.

Wednesday, Jan. 11	{ Appeal Motions and Appeals.
Thursday	{ Appeals.
Friday	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	{ Appeals.
Monday	{ Appeals.
Tuesday	{ Appeals.
Wednesday	{ Appeals.
Thursday	{ Appeal Motions and Appeals.
Friday	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	{ Appeals.
Monday	{ Appeals.
Tuesday	{ Appeals from the County Palatine of Lancaster and Appeals.
Wednesday	{ Appeals.
Thursday	{ Appeal Motions and Appeals.
Friday	{ Petitions in Lunacy, Appeal Petitions, and Appeals.
Saturday	{ Appeals.
Monday	{ Appeals.
Tuesday	{ Appeal Motions and Appeals.

Notice.—The days (if any) on which the Lords Justices shall be engaged in the full Court, or at the Judicial Committee of the Privy Council, are excepted.

Before the MASTER OF THE ROLLS.

At Chancery-lane.

Wednesday, Jan. 11	{ Motions and General Paper.
Thursday	{ General Paper.
Friday	{ Petitions, Short Causes, Adjourned Summonses, and General Paper.
Saturday	{ General Paper.
Monday	{ General Paper.
Tuesday	{ General Paper.
Wednesday	{ Motions and General Paper.
Thursday	{ General Paper.
Friday	{ Petitions, Short Causes, Adjourned Summonses, and General Paper.
Saturday	{ General Paper.

Monday	{ 28	{ General Paper.
Tuesday	{ 24	{ General Paper.
Wednesday	{ 25	{ Motions and General Paper.
Thursday	{ 26	{ General Paper.
Friday	{ 27	{ Petitions, Short Causes, Adjourned Summonses, and General Paper.
Saturday	{ 28	{ General Paper.
Monday	{ 30	{ Motions and General Paper.
Tuesday	{ 31	{ Motions and General Paper.

N. B.—Unopposed Petitions must be presented, and copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard; and any Causes intended to be heard as Short Causes must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir RICHARD T. KINDERSLEY.

At Lincoln's Inn.

Wednesday, Jan. 11	{ Motions, Adjourned Summonses, and General Paper.
Thursday	{ General Paper.
Friday	{ Petitions, Adjourned Summonses, and General Paper.
Saturday	{ Short Causes, Adjourned Summonses, and General Paper.
Monday	{ General Paper.
Tuesday	{ General Paper.
Wednesday	{ General Paper.
Thursday	{ Motions, Adjourned Summonses, and General Paper.
Friday	{ Petitions, Adjourned Summonses, and General Paper.
Saturday	{ Short Causes, Adjourned Summonses, and General Paper.
Monday	{ General Paper.
Tuesday	{ General Paper.
Wednesday	{ General Paper.
Thursday	{ Motions, Adjourned Summonses, and General Paper.
Friday	{ Petitions, Adjourned Summonses, and General Paper.
Saturday	{ Short Causes, Adjourned Summonses, and General Paper.
Monday	{ General Paper.
Tuesday	{ Motions, Adjourned Summonses, and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

Before the Vice-Chancellor Sir JOHN STUART.

At Lincoln's Inn.

Wednesday, Jan. 11	{ Motions and Causes.
Thursday	{ Causes.
Friday	{ Petitions and Causes.
Saturday	{ Short Causes and Causes.
Monday	{ Causes.
Tuesday	{ Causes.
Wednesday	{ Causes.
Thursday	{ Motions and Causes.
Friday	{ Petitions and Causes.
Saturday	{ Short Causes and Causes.
Monday	{ Causes.
Tuesday	{ Motions and Causes.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

No Cause, Motion for Decree, or Further Consideration, except by order of the Court, may be marked to stand over, if it shall be within twelve of the last cause or matter in the printed paper of the day for hearing.

Before the Vice-Chancellor Sir W. P. Wood.

At Lincoln's Inn.

Wednesday, Jan. 11	Motions and General Paper.
Thursday 12	General Paper.
Friday 13	
Saturday 14	Petitions, Short Causes, and General Paper.
Monday 16	General Paper.
Tuesday 17	
Wednesday 18	Motions and General Paper.
Thursday 19	
Friday 20	General Paper.
Saturday 21	Petitions, Short Causes, and General Paper.
Monday 23	General Paper.
Tuesday 24	
Wednesday 25	Motions and General Paper.
Thursday 26	
Friday 27	General Paper.
Saturday 28	Petitions, Short Causes, and General Paper.
Monday 30	General Paper.
Tuesday 31	Motions and General Paper.

N. B.—Any Causes intended to be heard as Short Causes, must be so marked at least one clear day before the same can be put in the paper to be so heard.

The death of Francis Turner, Esq., of No. 7, New-square, Lincoln's-inn, and of Queen-square, Westminster, requires more than ordinary notice, in justice to his character and merits, and in satisfaction of the respect and regret of his numerous friends, and of the legal profession. In the somewhat secluded and modest department of conveyancing, Mr. Turner had long been eminent for the learning, diligence, and ability which that always critical and often abstruse and profound science exacts. He had in youth been the favourite pupil of Preston, who, struck with his talents and acquirements, remarked, "They have sent me a pupil who knows as much as myself;" and Turner succeeded to his chambers. And in the course of a long practice, exceeding half of the present century, he became the instructor of several hundred pupils in succession; among whom were the Lord Justice Turner and the late Mr. Jacob. As a copyhold lawyer, Mr. Turner's reputation was peculiarly great; and in all questions of real property, his opinions were most trusted and esteemed. But he loved and cultivated the whole study of the law; he had well digested its principles; could readily recall its leading cases; and had the judgment and discernment requisite to apply this learning to new circumstances, and complications. Mr. Turner was a member of the Inner Temple. He was called to the bar on the 23rd November, 1810. In 1848 he was elected a bencher of that society, and in 1861 he held the office of its treasurer. He was born on the 20th January, 1785. The late Rev. Richard Turner, incumbent of Great Yarmouth, was his father. The present Lord Justice Turner is his younger brother. He married, on the 2nd October, 1810, Jane, eldest daughter of James Sayers, Esq., of Hopton, Suffolk.—Mr. Turner was by no means the mere lawyer. He delighted in general literature, and devoted his leisure to the books by which the great spirits of the past communicate with the present. He was a member of the Camden, Percy, Shakespeare, Arundel, and several Archaeological Societies. His manners were remarkably gentle, ingenuous, and pleasing. His disposition was ever kind and cheerful. His conversation animated, and pregnant with humour and instruction. Learning and modesty, combined with high integrity, good sense, and good taste, marked him for a lawyer, a scholar, and a gentleman. His health had been failing for some time previous, and on

Sunday the 11th instant, he expired, without much suffering, at his residence, Queen's-square, Westminster. The great organ of the Temple church, on the Sunday following, pealed forth, for his requiem, the Dead March in Saul. The walls and pillars of that beautiful building, vibrated their last sad tribute to his character and standing; but his memory will ever linger in the hearts of his friends, and a large circle of professional and social acquaintance give a blessing to his tomb.

FROM THE TEMPLE TO THE TEMPLE.—Some days ago a paragraph appeared in the papers, stating that a case was under the consideration of the Benchers of the Inner Temple, one of whose members, who had been called to the bar, having been ascertained to be a clergyman in holy orders. A different course has been adopted by a barrister of considerable practice, who has deliberately renounced his profession and obtained admission into the ranks of the ministry. The gentleman in question, Mr. Edward Penrose Hathaway, was educated at Queen's College, Oxford, and graduated in 1839, when he took classical honours. Shortly afterwards he was called to the bar, and at once began to lay the foundation of what became a lucrative practice. Turning, however, his thoughts to clerical life, he obtained a "title to orders" from the Rev. Anthony W. Thorold, M.A., rector of the metropolitan parish of St. Giles-in-the-Fields, and upon that title he was ordained deacon by the Bishop of London, in the Chapel Royal, Whitehall. He will act as curate of St. Giles's, and at the Christmas ordination of 1865, will be admitted to the priesthood of the Church. Mr. Hathaway is but one out of many barristers who have abandoned the law for the Gospel. Dr. Thirlwall, now Bishop of St. David's, was called to the bar by the Society of Lincoln's-inn in 1825, and practised until 1828, when he was ordained and appointed to the rectory of Kirby Underdale. Dr. Sier, a well-known London incumbent, was formerly a barrister. Several other instances might be mentioned. A case of a somewhat different character from either of the foregoing may be found in that of a gentleman who was for some time curate of St. George's, Hanover-square. Mr. Hugh Weightman was educated at Trinity Hall, Cambridge, and graduated in 1840. Shortly afterwards he was called to the bar. He continued in the pursuit of his profession for some years, and in 1850 was ordained by the late Dr. Bird Sumner, Archbishop of Canterbury. Two or three years since he returned to his old love, and is now again in full practice at the bar. This case differs from that of the gentleman called by the Society of the Inner Temple, inasmuch as when he became a member of the bar he was a layman.

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THE JURIST.

LONDON, DECEMBER 31, 1864.

THE scheme of the Bar Committee on reporting has not been the only or the first fruit of Mr. Daniel's agitation. The very next number of the Reports of Cases in the Rolls Court that followed the publication of his first letter bore this defiant inscription:—"The authorised Reports of Cases argued and determined in the Rolls Court;" and since the December meeting of the Bar, Mr. Beavan has devoted a page in every part of his reports to the display of a notice, that "these reports continue, as heretofore, to be published with the express sanction and authority of the Right Hon. the Master of the Rolls." Doubtless, the authorised reporter has not been content with self assertion, but has endeavoured to search out and count such faults or inadvertencies as may have contributed to provoke the outcry against the order to which he belongs. During the year which is now ending he has published five parts of reports, containing 888 pages, and 173 cases. In the last of these parts, which belongs to the 33rd volume of a series commencing with the present reign, we may expect to find exemplified all the good results that can flow from experience acting under the sanction of authority, and stimulated by competition and the fear of revolution. The main characteristics of good reports are—1. A judicious selection of the cases, avoiding mere repetitions of settled principles or rules, cases that would be obviously wrongly decided if they were decided otherwise, cases involving combinations not likely to recur, &c. 2. Brevity in setting forth, omitting all irrelevant facts and arguments, even abridging the language of the judgment, except in those rare cases in which the importance of the occasion and the ability of the judge conspire to produce a work of art. 3. Compact printing, so as to reduce to a minimum the serious inconvenience involved in the mere bulk of a working library. 4. Prompt publication. 5. Accuracy—an essential virtue, and, we believe, seldom found wanting, so far as regards the material points of a case.

The first case in Mr. Beavan's last part is *Coventry v. Barclay*, decided on the 19th June, 1863, published on the 24th November, 1864, having been the subject of an appeal to the Lord Chancellor, who reversed the decree of the Master of the Rolls on one point, and whose judgment, pronounced on the 10th December, 1863, was published in THE JURIST on the 2nd January, 1864. The last case in the same part was decided on the 31st July, 1863. Such is Mr. Beavan's notion of the diligence which becomes an authorised reporter! To return to *Coventry v. Barclay*—we make no objection to Mr. Beavan's report of that case, except that it occupies seventeen pages of widely-spaced and meagre print, ten of which are devoted to a verbatim report of a written judgment that would have been much improved by compression to half its bulk. We are sorry to say, that in THE JURIST the case is

given at nearly equal length, but the economy of printing is such that it occupies little more than three pages.

But it is in the selection of cases that Mr. Beavan departs most widely from our ideal of a judicious reporter, who, we think, would not have devoted thirteen pages, nor even three lines, to the case of *The Attorney-General v. The Corporation of Avon* (33 Beav. 67), for the point, that a charter granted under the act 1 & 2 Vict. c. 78 (which Mr. Beavan cites as 1 Vict.), enabling the Crown to create a municipal corporation, has the effect which the act says it shall have, but not retrospectively, so as to avoid previous dealings with charity property.

Nor would our model reporter have reported *May v. May* (p. 81) merely to record that the Master of the Rolls had his doubts as to the accuracy of a certain copy of a lost document, and inferred, from the evidence, that a certain arrangement between a father and a son was intended for the exclusive benefit of the son; and held, that a conveyance by a father to a son might be valid, although intended as a qualification to vote. He would have refrained from adding *Hora v. Hora* (p. 89) to the authorities for the point, that if a fund is given in trust for the maintenance and education of infants, and they are properly maintained and educated, the trustee is not bound to account. He would not have insulted his readers with *Semple v. Holland* (p. 94), for the proposition, that a judgment creditor of a tenant for life cannot have an injunction to restrain his debtor from incurring a forfeiture by disusing the name and arms of an ancestor. He would not have added *Hennessey v. Bray* (p. 96) to the innumerable cases on the construction of wills, unless it had decided something more than that a gift to the first and other sons, successively, of A., according to the priority of their respective births, and their respective heirs (omitting "of the bodies"), confers estates tail; and that a trustee de facto is liable to account as a trustee de jure; and that a mortgagee of a life estate, limited to determine on alienation, who has taken possession, must account for the rents and profits. Nor *Fergusson v. The London and Brighton Railway Company* (p. 103), to teach us that a piece of ground held on lease with a house and garden, but separated from them by a public road, is not part of the house, within the 92nd section of the Lands Clauses Consolidation Act. Nor *Churchill v. Shepherd* (p. 107), that property vested in a lady before the execution of her marriage settlement, but outstanding and overlooked, is not within a covenant to settle property which might descend, or devolve to or vest in her during the coverture. Nor *Bashford v. Cann* (p. 109), that a contract by a grantor of a life annuity to assign the policy on the grantor's life, in case the grantor should redeem the policy at a fixed price, does not entitle the representatives of the grantor to the policy in case of his death without redeeming (though, certainly, that such a claim should have been brought to a hearing must be reckoned among the curiosities of litigation). Nor would he have added *Sykes v. Sheard* (p. 114) to the cases deciding that a discretionary power to consent given to A., B., and C., cannot be exercised after A.'s

death by B. and C. We think, too, that it was not worth while to report *Re The East Wheel Martha Mining Company* (p. 119) for the point, that where the directors have a discretion as to the evidence they will require of the title of a proposed transferor of shares, it is not unreasonable to require his certificate to be left for examination. Nor *Troup v. Ricardo* (p. 122) to shew that the Court will not act against a person without giving him an opportunity of being heard. Nor did the case of *Brown v. Kennedy* (p. 133), however interesting as a matter of scandal, require twenty pages for the elucidation of the very trite legal proposition involved in the decision.

We turn from Mr. Beavan to a greater offender. Twelve parts of the Common Bench Reports, containing 2208 pages, and eighty-six cases (being an average of twenty-five pages to each case), have been published during the present year. There are nine cases in the part published on the 23rd of this month. In *Fish v. Kelly* (p. 194) the simple point was, that an attorney who, acting for A., became acquainted with the contents of a certain deed, is not liable to an action for negligence at the suit of B., to whom, not being employed as his solicitor, he unintentionally mistakes the effect of the deed. The report fills twelve pages. No question arose on the deed; it was admitted that the plaintiff, acting on the statement of the defendant, had suffered loss; and the only question was as to the defendant's liability, yet Mr. Scott devotes five pages to a verbatim copy of the deed. *Naylor v. Mortimore* (p. 207) was a special case; it fills thirty-seven pages; the special case, and the speeches of the judges, are given verbatim. This is easier for the reporter than for his subscribers. *Reed v. Edwards* (p. 245), deciding that the owner of a dog, who, knowing its propensities, suffers it to be at large, is answerable for damage done by it in his neighbour's preserve, did not require four pages and a half for the statement of the facts. *Hill v. Nuttall* (p. 262), which turned entirely on the construction of an obscure contract, and ought not to have been reported at all, fills seventeen pages. In *Bridges v. Potts* (p. 314), the questions were, whether, under a stipulation in an agreement for a lease for twenty-one years of a mine, that the lessee might "at any time determine the agreement, or the lease agreed to be granted, on giving six months' notice," the notice must be given to expire on the anniversary of the commencement of the tenancy; and whether the dead rent was apportionable. Mr. Scott sets forth every clause of the agreement, the notice, on the terms of which nothing turned, two long letters, which were wholly irrelevant, and the defendant's "points for argument," all verbatim. Lastly, there is the case of *Pearson v. Göschen* (p. 352), upon the construction of a charterparty, involving no principle of general application.

The fact is, that Mr. Scott's reports are a nuisance, and an intolerable grievance to every lawyer who desires to possess a complete collection of "authorised" reports. Mr. Best, Mr. Hemming, and Mr. Miller, gentlemen who report conscientiously and with ability (though we think that even their reports are by

no means unexceptionable), have protested against the proposal to place the reports under the control of a council, or of an editor. We think that the persistence of Messrs. Beavan and Scott as authorised reporters is quite sufficient to demonstrate the absolute necessity of such control.

We are glad that Mr. Fraser is both persevering, and well encouraged to persevere, in his endeavour to procure the establishment of law classes for articled clerks. We have never had much sympathy with the recent attempts to reform the legal education of the Bar. Students of the Inns of Court and barristers newly called have abundant leisure and ample means for professional study; but an articled clerk in a busy office has little or no opportunity during the day for the study of legal principles. For him, legal evening classes, free and familiar intercourse with the teacher, access to a good library of institutional works, practice in legal discussion, and the stimulus of frequent examinations, seem to be almost a necessity. But these have not hitherto been provided. The lectures at the Law Institution are good, as far as they go, but they fall far short of what is required. Evening classes, under the management of first-rate men, should be established in London and in the large provincial towns; and some arrangement should be made for fixing a reasonable average limit to the hours of attendance at the office, so far as articled clerks are concerned. Attorneys can never master the details of every branch of the law, and it is of essential importance that they should, before they commence practice, be thoroughly grounded in general principles. They will then have a sound guide in the emergencies of business, and will be qualified to appreciate and criticise the advice given to them, and the work done for them, by their counsel. Thus, the education bestowed upon articled clerks may react upon the Bar.

Correspondence.

TO THE EDITOR OF "THE JURIST."

Sir,—I am exceedingly obliged to you for having inserted in your columns my letter on the subject of law classes, and I now beg to inform those of your readers who may be articled clerks, that the memorial therein referred to will not remain at Mr. Harrison's, 116, Chancery-lane, after the 14th January, as it is then intended to present the same to the Council of the Incorporated Law Society.

It may here be observed, that the memorial has not received so many signatures as were anticipated, but this may probably be attributed to the fact that articled clerks do not, as a rule, avail themselves of the valuable information and instruction to be derived from a regular perusal of your or the other legal journals, consequently but few of them are aware of the memorial.

Increased facilities are undoubtedly required for the assistance of articled clerks in the prosecution of their studies, and as the object the memorial has in view is to improve the present defective system, if you, Mr. Editor, could favour us with any suggestion upon

the matter, you would, allow me to say, be very materially assisting this humble effort on our part.

I have the honour to remain, Sir,
Your most obedient servant,
W. FRASER.

78, Dean-street, Soho, W.
December 27, 1864.

LAW CLASSES.

This is to give notice, that a memorial to the Council of the Incorporated Law Society, asking them to institute law classes for the assistance of articled clerks in the prosecution of their studies, lies for signature at Mr. W. Harrison's, Law Stationer, 116, Chancery-lane.

All those gentlemen, who may be articled clerks, and consider the existing means for their education to be insufficient, are requested to support the memorial, and forward (by letter) any suggestions they may think fit to make, to Mr. W. J. Fraser, 78, Dean-street, Soho, W.

Letters from the Master of the Rolls, Sir J. P. Wilde, Vice-Chancellor Wood, Sir Fitzroy Kelly, Mr. Daniel Q. C., Mr. J. G. Phillimore, Q. C., Mr. Serjeant Simon, Dr. Herbert Broom, and T. H. Haddan, Esq., B. C. L., late Lecturer at the Incorporated Law Society, as well as from other members of the profession, have been received, expressing for the most part their approval of the object the memorial has in view.

PROSPECTUS OF THE LECTURES

To be delivered during the ensuing Hilary Educational Term, by the several Readers appointed by the Inns of Court.

CONSTITUTIONAL LAW AND LEGAL HISTORY.

The Reader will trace the History of our Constitution from the reign of Charles the First down to the last period which the time allotted to each Course of Lectures will allow him to reach.

He will dwell on the Legal History of each reign, as recorded in the Statute-book, the State Trials, and the Reports.

In his Private Classes he will pursue the same plan from the reign of Richard the Second down to the last reign that his Course will include.

The books to which he will constantly refer are—*Rapin's History*—*Blackstone's Commentaries*, edition by Kerr—*Hallam's Constitutional History*—Chapter on the Constitution in *Hallam's Middle Ages*—*Brodie's History*—*Burnet's Memoirs*—*Lord Clarendon's History and Correspondence*—*May's History*—*State Trials*—*Somers's Tracts*—*Lord St. Leonards' Preface to Gilbert on Uses*—*Milton's Prose Works*—*Matthew Paris*—*Sullivan's Lectures*—*Millar's History*—*Creasy on the Constitution*—*Walsingham*—*Knighton*—*Fortescue (Amos's Edition)*—*Reeves's History of the English Law*—*Ralph's History*—*State Tracts*.

EQUITY.

The Reader on Equity proposes to deliver, during the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course), on the following subjects:—

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1. On the Rights and Liabilities of Married Women with regard to their Separate Property; and on Restraints upon Alienation.
2. On the Right of a Married Woman and her

Children to a Settlement out of her Personal and Real Estate.

3. On the Relief afforded in Equity against the Consequences of Mistake.

An Advanced Course.

1. On the Validity of Voluntary Conveyances and Donations Mortis Causa.

2. On the Equitable Doctrine of Election.

In the Elementary Private Class, the subjects discussed will be—The Doctrine of Cyprès with regard to Charitable Trusts—The Nature of Legal and Equitable Mortgages, and Suits for Redemption and Foreclosure.

In the Advanced Private Class, the Lectures will comprehend—The Administration of Assets, and the Principles of Equity Pleading.

THE LAW OF REAL PROPERTY.

The Reader on the Law of Real Property, &c. proposes to deliver, in the ensuing Educational Term, Two Courses of Public Lectures (there being Six Lectures in each Course), on the following subjects:—

Elementary Course.

1. The Statutes known as Lord St. Leonards' and Lord Cranworth's Acts, in continuation and conclusion of the last Term's Lectures.

2. The Law of Mortmain and Charitable Uses.

Advanced Course.

The Law of Fines and Recoveries, and the Statute for their Abolition.

In his Private Classes, the Reader will, with the Elementary Class, continue his Course of Real Property Law, using the work of Mr. Joshua Williams as a Text-book; and with the Advanced Class, the Reader will go through Mr. Sandars's work on Uses and Trusts.

JURISPRUDENCE, THE CIVIL LAW, AND INTERNATIONAL LAW.

The Reader on Jurisprudence, the Civil Law, and International Law proposes, in the ensuing Educational Term, to deliver Six Public Lectures upon the following subjects:—

1. The Historical Development of the Roman Law from the times of the Antonines until the composition of the *Corpus Juris Civilis*.

2. The History of the Laws of Rome, England, and France, relating to the Disposition of Property by Testament.

3. The Effect of Fraud, Duress, and Mistake (*dolus malus, metus, error*) in vitiating a Contract.

4. Domicil.

In his Private Class, the Reader will continue the Course of Roman Civil Law, with the discussion of the Roman Law of Contracts, using Sandars's Edition of Justinian's Institutes, and the *Systema Juris Romani* of Mackeldey as Text-books, and contrast it with the Modern French Law upon the same head.

The Reader in his Private Class will also discuss points of International Law, relating to Treaties of Peace, using the work of Wheaton as the Text-book, and referring to the works of the principal modern Jurists, the decisions of the Admiralty and Prize Courts of England and America, the Debates in Parliament, and State Papers relating to the cases under discussion.

COMMON LAW.

The Reader on Common Law proposes to deliver, during the ensuing Educational Term, Two Courses

of Six Public Lectures, each on the following subjects:—

Elementary Course.

1. The Rise and Progress of our Mercantile Law, with some Notice of the Leading Statutes relating to it.
2. Mercantile Instruments, and the Evidence admissible to explain them.
3. Mercantile Remedies, whether by Action at Law or otherwise.

Advanced Course.

1. The Jurisdiction of Courts of Common Law in regard to Contracts.
2. Contracts, Special or Simple, of ordinary Occurrence, with the Pleadings and Evidence appropriate in Actions thereupon.
3. Contracts of Bailment.

With his Private Class the Reader will examine the above-mentioned subjects in the order indicated, using, with his Elementary Class, Smith's Mercantile Law (by Dowdeswell), and Smith's Leading Cases (5th edition); and with his Advanced Class, Chitty on Contracts, Story on Bailments, and The Precedent of Pleadings, by Messrs. Bullen and Leake, as Text-books for reference.

By order of the Council,

(Signed) WESTBURY, C., Chairman.

Council Chamber, Lincoln's Inn,
December 21, 1864.

INTERNATIONAL MARITIME LAW LECTURES.

THE following Course of Lectures, under the sanction of the Council of Legal Education, will be delivered to the Members of the Inns of Court, by Leone Levi, Esq., LL.D., and Professor of Commercial Law at King's College, London, in the Hall of Lincoln's Inn (by permission of the Benchers), on Wednesday, the 11th, 18th, and 26th January, and the 1st February, 1865, at half-past twelve (noon):—

Sir Roundell Palmer, her Majesty's Attorney-General, will preside at the Introductory Lecture, to be delivered on Wednesday, the 11th January.

INTRODUCTORY LECTURE.

Jan. 11.—*On the Present State of International Maritime Law.*

Special Province of International Maritime Law as a Branch of the Law of Nations. History and Leading Authorities. Alleged Inability of International Law to control Positive Politics. Proposed Congress of Nations, and Formation of a Code of Maritime International Law. Recent Changes in Navigation, Naval Construction, and Naval Warfare.

LECTURE II.

Jan. 18.—*Sea Laws in Time of Peace.*

Freedom of the Sea. Appropriation of Territorial Waters and Inland Seas. Navigation of Rivers. Difference between Private Ships and Public Ships. Mail Steamers. Ceremonials at Sea. Proofs of Nationality. Controversy on the Territoriality of the Ship. Piracy. Slave Traders. The Cagliari Dispute. Right of Visit. Reprisals. Embargoes.

LECTURE III.

Jan. 25.—*Belligerent Rights.*

Who are Belligerents. Concession of Belligerent

Rights. Right of Capture. Difference between Public and Private Property. Proposed Abolition of Capture of Private Property at Sea. Right of Search. Contraband. Duties of Cruisers and Captors. Courts of Prizes. Blockade. Effect of Inland Communication of Blockades. Bombardment of Towns. Difference between Inland and Maritime Warfare, and its Effects on Belligerent Rights.

LECTURE IV.

Feb. 1.—*Neutrality and Neutral Rights.*

Neutrality, what it is. Who are Neutrals, and what is Neutral Territory. Rights and Duties of Neutrals. Neutral Trading with Belligerents. Limitations as to Contraband of War. What Articles are Contraband, and how affected by Destination. Military and other Officers. The Trent Dispute. Limitation of Neutral Trading with Blockaded Ports. Construction of Ships of War in Neutral Ports. The Foreign Enlistment Act, and its Effects.

THE RECTOR AND THE HIGHWAY RATES.—A curious case was brought before the Pickering Bench at their last weekly meeting, which occasioned no small interest. The surveyor of the highways for the parish of Kirbymisperton, Mr. John Cordukes, summoned the rector, the Rev. C. J. Sympsn, and the following members of his flock, viz. Mr. J. Suggett, Mr. J. Hardcastle, and Mr. J. Hardcastle, jun., respectively of Kirbymisperton, for refusing to pay the (alleged) legal rate for the maintenance of the parish highways. The sums claimed were—the rector, 20*l.* 11*s.*; Mr. Suggett, 14*l.* 16*s.* 6*d.*; Mr. Hardcastle, 3*l.* 10*s.* 6*d.*; and Mr. Hardcastle, jun., 16*l.* 16*s.* Rates proportionate to these charges had been paid by other parishioners, and it was shewn that the rate was duly made, allowed, and published according to law. For the defence, it was shewn that a spiritual guide is not the less a man of the world, it being alleged that the rate sued for was at the rate of 1*s.* in the pound, and was therefore objected to as being 2*d.* in the pound in advance of the maximum figure allowed by the Highway Act, the highest sum allowed being 10*d.* in the pound. The objection was fatal, and the Bench dismissed the whole of the cases.

HOW BURIAL SOCIETIES ARE MANAGED.—The judge of the Liverpool County Court has been engaged in the investigation of the affairs of the St. Patrick's Burial Society, on the suit of Mr. Hugh Caraher. At the last annual meeting of the society, Mr. Caraher was elected as member of the managing committee; but no committee meeting being called, he wrote to the president, complaining of the way in which the society's affairs were conducted. This request of Mr. Caraher was not complied with; but, on the other hand, he was excluded from the committee, on the ground that he had written a communication which was "injurious to the interests of the society." The investigation disclosed some painful and discreditable facts. It appeared that the society has been in existence for many years, and that it has large numbers of members in all parts of the country. Its income amounts to 40,000*l.* a year. In 1849 its affairs reached a crisis, and it became bankrupt. It was, however, revived, when Mr. Treacy, the present secretary, was appointed to take the office, at a salary of 8*s.* per week, but since that time his salary has been increased to 400*l.* a year, with house rent, coals, and gas in addition. It was also shewn that he had recently received the sum of 100*l.* to indemnify him for "extra labour in London." Treacy stated that he had never made any return of his travelling expenses, but was in the habit of placing a certain sum—say 20*l.* in his pocket when

he left home, and when he returned he counted how much he had left, and entered the difference as "expenses." It also appeared that several agents of the society had defrauded it to a very considerable extent, but that no steps had been taken to punish them, and that they were still in the employ of the society. Nor did the accounts shew how these deficiencies had been caused. Another point was, that the president (the Rev. Patrick Phelan) had demanded and had received a salary of 100*l.* per annum, though there was no rule authorising such payment; also, it was stated that the printer to the society had received, during the last five years, between 3000*l.* and 4000*l.* It further transpired the trustees were the Rev. Mr. Phelan, Treacy, and a man named Judge; and that Judge, a shoemaker, had acted as medical inspector, and as such had received various payments. A receiver was appointed some time ago, and it was arranged that the case should stand adjourned until a full statement of the monetary affairs of the society could be made. It was agreed also that Caraher should in the meantime be reinstated as a member of the society.

WIMBLEDON COMMON.—The proposed bill for the protection and improvement of Wimbledon Common has been printed. The preamble recites, that the common has been the resort of gipsies; that it is ill-drained and unfit for pasturage; that rights of taking gravel from certain parts of it are exercised by adjoining parishes; that the National Rifle Association have the use of it from the lord of the manor; that the lord of the manor is willing to appropriate the bulk of the common as a public park; that provision for the expenses of such appropriation must be made by selling part of the present area; and that it is expedient certain roads should be diverted, viz. part of the road leading from Stag-lane and the Robin Hood-road, crossing the common. The act constitutes Lord Spencer protector of the park, authorising him to set aside a portion of the common coloured pink on the plan, and inclose it with fences, so as, however, not to interrupt the view from the villas around, and to make walks, drives, and rides in the park, level obstructions, &c., and appoint gatekeepers and park-keepers. The park to be open at six o'clock in the morning, or at sunrise, if after six o'clock, and not to be closed till sunset. The park may be used for any purpose of practical public utility or interest with the consent of the Home Secretary, when money can be claimed for entrance; but political meetings, open-air preachings, and meetings of clubs or benefit societies, are prohibited. Protector to have power of making regulations as to permitting refreshments to be sold in the park and the like; for regulating quarries and pits to be used by the parishes; and for excluding gipsies and tramps. Bye-laws not to be contrary to act, and to be approved by the Home Secretary. Provision is made for compensating those who had common rights. The site of the windmill may be used by Earl Spencer for building a dwelling-house, with grounds. A plan accompanies the bill, in which the land to be sold is coloured blue; but farther sales of land coloured brown and green may be made if money raised is insufficient, the brown to be sold before the green; and if these are insufficient to pay all claims, the claims shall abate proportionably. The map shews that only a strip of land is to be sold. The blue land to be first taken is on the south and west of the park, and the brown and green together only cut off the extreme north-eastern projection in Putney parish, and near to the Chelsea water-works.—*Globe*.

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THE JURIST.

LONDON, JANUARY 7, 1865.

It is a matter of some interest to trace the gradual extension, or, to speak more correctly, the gradual development, of the principle which regulates the liability of corporate bodies to actions of tort. It may, perhaps, be contended, that in order to meet the justice of particular cases, and to saddle the damages on the party best able to pay them, the Courts have, of late years, exceeded the limits of the original principle, and laid down a new rule of liability; the effect of which is, that a corporation is quite as liable to be sued for torts, whatever their nature, as private individuals are. According to the older authorities, a corporation was liable for such wrongs as were committed by its agents innocently—that is, without any evil motive or evil state of mind being a necessary ingredient in the tort; and even then, unless it was some trifling act, or some act of every day occurrence, it was necessary to prove that the corporate body had authorised it by their common seal. Thus, in *Yarborough v. The Bank of England* (16 East, 6), where the Bank of England was sued in trover for detaining bank notes, Lord Ellenborough, in his very elaborate judgment, cites the following dictum:—"A corporation cannot do a tort but by their writing under their common seal." (Per Fitzjames, Justice, *Borough Corporations*, pl. 34). And in the case before him, he says that, after verdict, it must be presumed that a competent conversion was proved; and if it be essential to such conversion, that there should have been an authority from the company under seal to detain the notes on their behalf, it must be presumed that such authority was proved. His Lordship, however, clearly was of opinion, that the detention of the notes in the case before him rendered the Bank of England liable, although they had not authorised it by their common seal. But as we have observed, a conversion of goods and chattels or a distress may be wrongful in law, and yet involve no evil motive—no malicious intent—nor is it suggested by Lord Ellenborough in the judgment in the above case, that a corporate body could be liable for torts of that nature. But as the number of trading and railway companies has increased, so the notion that they were legally liable for torts of every kind committed by their servants, has become more and more ventilated, and at length established. Thus, in *Stevens v. The Midland Railway Company* (23 L. J., Ex., 828; 18 Jur., part 1, p. 932), the company was sued for the act of their superintendent of police, in criminally prosecuting the plaintiff, which he had done without the authority of the company. We will quote verbatim the words of Baron Alderson: "The directors are liable if they direct their servant to institute a prosecution maliciously; but they are not liable constructively for an act like the present, of which they knew nothing. The company cannot be considered to have acted *malò animo*, as they have no *animus*. The

directors are responsible for the act, but not for the animus. The action for malicious prosecution depends on the animus." And his Lordship further observed: "An action for a malicious prosecution cannot be sustained against a corporation, as such an action requires the existence of malice, and a corporation cannot have malice." His Lordship broadly lays down the rule, that where the motive is an ingredient in the tort, a corporation cannot be liable. Baron Martin, however, it will be seen, advisedly declined to give his opinion on the point.

The point was again raised before the Court of Common Pleas in the case of *Lawson v. The Bank of London* (25 L. J., C. P., 188; 2 Jur., N. S., part 1, p. 716), where the bank was sued for fraudulently establishing their bank under the name of the Bank of London, in order that it might be taken for a bank of the same name previously established by the plaintiffs. It was argued, on the one hand, that the defendants, a corporation, could not be liable for a fraudulent intent; and on the other, that a trading corporation was different from a municipal body, to which bodies only the older authorities applied. The case was decided upon another point, and the principal question left in doubt. Willes, J., observes—"I am by no means prepared to say that a corporation might not have been liable, as it has capacity to do the act and to receive notice; but it is unnecessary to express any opinion on that point." Thus, it is clear that at this time the extent to which corporations were liable for torts, in which the question of animus is involved, was, at all events, doubtful. No authority could be produced to decide the question; and some of the judges had not apparently formed an opinion upon it.

The next case to which we would call attention is that of *Green v. The London General Omnibus Company* (29 L. J., C. P., 13; 6 Jur., N. S., part 1, p. 228), where the company was sued for maliciously obstructing the plaintiff in driving his omnibuses. To the declaration there was a demurrer, so that the fact that the company's servants did, by their orders, obstruct the plaintiff's omnibuses, was admitted on the record. But the contention was, that the directors or others who actually gave the order were the parties liable, not the corporation, who could not be guilty of a malicious intent. The Court, however, decided that the company was liable, one ground of their judgment being, "that the whole of the acts charged against the defendants are acts connected with the driving of their vehicles, and that as the defendants were incorporated for the purpose of driving omnibuses, the actual things done by the defendants were acts done within the purpose of their incorporation." We confess we do not understand this ground of the judgment. The defendants were incorporated to drive omnibuses, but they were not incorporated to obstruct those of other people. Probably the main ground of the judgment is that subsequently stated:—"I may add, as an additional reason for our decision, the inconvenience to the public that would arise if we were to hold, that these companies, incorporated for the purposes of trade, had a restricted limitation put upon their liability by reason of such incorporation, and were exempt from responsibility

because they intentionally wronged the public. We think it extremely important where such companies admit that they have, in fact, intentionally committed a wrong, that the public should have a remedy against them, and not be driven to an action against their servants and others whom they have employed, and who may be entirely incapable of giving the recompense which the law may award." Now, it may be reasonable and just that companies should be liable in such cases, but the question rather seems to be, whether a court of law can say, that whatever is reasonable and just is law; and whether the convenience of the public shall be allowed to have weight in a judgment. If directors have ordered their servants to commit a tort, they are personally liable, and probably competent, to satisfy the damages. This case is, at all events, a great development of the principle of liability, and seems to destroy the notion that a corporation cannot have an animus, and cannot be capable of a malicious intent.

The last case with which we will trouble our readers is the recent one of *Stiles v. The Cardiff Steam Navigation Company* (10 Jur., N. S., part 1, p. 1199). There the company was sued for keeping a dog, *knowing* that he was accustomed to bite. Here the scienter was the gist of the action, and it appears to have been almost admitted on the part of the defendants that the company could *know* by their agent; and the several judges express the clearest opinions on the point. Crompton, J.—"It is not to be contended that the defendants, being a corporation, are, therefore, incapable of knowledge in such a matter. Such a doctrine would be very pernicious." And Shee, J.—"As to corporations, there is no difference between them and individuals with respect to questions of this kind."

Thus, it would appear, that at the present time the liability of a corporate body for a tort is as extensive as that of a private individual; and that where evil intent or knowledge are necessarily a component part of the tort, the intent or knowledge of the servants of the corporation is the intent or knowledge of the latter. This may be quite fair and reasonable; but we think it would be difficult to maintain that it is no more than a development, caused by the changes in society, and in the mode of transacting business, of the original principle which governed the liability of corporations.

In the 14th line of the leading article of our last number, "count" has been printed instead of "correct." We take this opportunity of expressing our regret that Mr. Scott should have fancied that our strictures on his reports were suggested by any personal feeling. We know that Mr. Scott has many friends, and we do not know that he has a single personal enemy; but he must be as painfully aware as his subscribers are, that his reports amply illustrate the evils which flow from the present system of unrestricted reporting. Under a different system he would doubtless report to the satisfaction of every one. We have criticised the existing authorised reports with more

freedom, because we are satisfied that no change can be made which will injuriously affect the vested interests of the reporters; but, however that may be, no vested interests can be allowed to stand in the way of any reform which is necessary for the due administration of the law.

Correspondence.

TO THE EDITOR OF "THE JURIST."

SIR,—Your mode of dissecting the last part of Mr. Beavan's Reports, if applied to any of the regular reports, would, I apprehend, have a similar result; for, until the character and position of the reporter be raised, he will not be competent, or not feel himself at liberty, either entirely to ignore a lower standard of legal knowledge than that to which, perhaps, he himself has attained, or materially to abbreviate a written judgment. If Mr. Beavan were appointed official reporter of the court to which he is attached, and had in that capacity an adequate stipend, I have no doubt that his reports would contain all decisions that were worthy of being reported, and no more. How can any man be expected to exercise a wise discretion, when he knows that rival reporters will attribute his silence to a negligent performance of the duties of his office? Mr. George Sweet, one of the committee on law reporting, very properly states, that an unknown decision cannot be valuable or important; but the principle which, in these later times, is attempted to be deduced from that self-evident proposition is, that reporters ought to be legion, instead of what, I submit, is the logical deduction, that the discretion of reporting ought to be limited, and placed in the ablest possible hands. It is of much greater importance to the Bar, and the public generally, that what is called "the unwritten law" should be in a comprehensive form, and capable of being easily and rapidly ascertained, than that precedent should be diffused and scattered through a myriad of channels, none of which can really lay claim to superior purity or authority. Doubtless, the present effort of Mr. Daniel is meritorious in this respect—that it admits the evil of an unlimited discretion in reporting, and attempts to remedy it; nor can I understand, that the report of the committee was adopted in any other light by the recent meeting of the Bar. But is an unpaid council a proper body in which such a discretion ought to be vested? Even if the Inns of Court could obtain an exclusive charter for reporting decisions, I do not think it possible that they could practically exercise such functions as Lord St. Leonards and Mr. Daniel would invest them with. Reporting is, or ought to be, a privilege of the Bar exercisable for the benefit of themselves and the public generally. Decisions used to be reported, if I may use the expression, *con amore*, by the ablest lawyers and judges; it is now, indeed, too often a labour of love, in which the inexperienced engage; but I do not hesitate to say, that a time is at hand when really authorised reports alone will be citable in courts of justice, and that no indecent rush of reporters to the platform, for the purpose of advocating their own peculiar views or interests, with as little respect for the Bar particularly as for the public generally, will be able to avert that coming event. As I understand the plan proposed by Mr. George Sweet, the council that he suggests would simply appoint and dismiss reporters, and manage financial matters. As for myself, I should certainly prefer the right of appointment to be vested in the Crown; but, with

reference to the question of finance, I agree that the accounts of the official reporters ought to be audited by the Inns of Court. I cannot but think, that if Mr. Daniel's figures are correct, based, as they are, on so limited an amount of patronage, that an exclusive system would not fail to pay just and adequate stipends to the reporters, and to supply the practising bar with copies of the reports at a reasonable price. I repeat, as I have observed elsewhere, that it is a matter in which all the members of the Bar, whether practising or not, ought to take a share, and the practising bar ought, as such, to be supplied with authorised reports at due intervals. The judges have, so to speak, been too much *nursed of late*. Let them, for the future, not to speak irreverently, *run alone*. In this connection, I am reminded of once hearing Sir John Stuart say, when counsel was about to cite a case in proof of something self-evident: "O, you need not trouble—the *will itself is your best case*." How often does it not happen that justice is impeded, instead of furthered, by this chaotic mine of precedent, from which the indefatigable lawyer digs something favourable to any kind of contention! An unskilful reporter represents, perhaps, as a solemn decision, a decree that has been taken by *consent*, or omits from his statement of facts an important element of the case, or misrepresents the result altogether. Surely, such cases are more likely to occur when the number of reporters is legion, and unauthorised, than when limited and authorised! Hence it is, that a judge often has to refine his judgments to the nicest point, in order to avoid collision with something that, perhaps, was never decided, or, relying on the error of some self-constituted reporter, adds another item to the ever-increasing body of bad law. As it seems that the Bar will not rebuke the presumption of Mr. Daniel, I trust that the judges will do so in their response to the communication from the committee, and I think they cannot do otherwise. They admitted the citation of the irregular reports, because there was an absolute want, and there is the same absolute want now; moreover, Parliament had not, and has not, hitherto defined an *authorised* report, which, as at present defined by Mr. Beavan and others, means *authorised by the judge*, and I think that is the present footing of the authorised reporters, a footing which the judges are bound in honour to maintain; but it is a definition which Lord Westbury expressly repudiates. I feel strongly that the Bar and the public would be deeply indebted to the present Lord Chancellor, if, in one of his luminous speeches, he would set us all right in this matter, and inaugurate, in this nineteenth century of enlightenment and progress, a really authorised series of law reports.

Your obedient servant,
G. L.

Rolls Chambers, Chancery-lane,
Jan. 4, 1866.

LAW CLASSES.

ARTICLED CLERKS' DEBATING SOCIETY.—At an ordinary meeting of this society, held at the Whittington Club, Arundel-street, Strand, on Wednesday last, Mr. Fraser moved, and Mr. B. Davis seconded, "That in the opinion of this meeting it is expedient that this society should express by letter their approval of the memorial which is now in course of preparation, and shortly to be presented to the Council of the Incorporated Law Society on the subject of law classes." To this Mr. Drummond moved, as an amendment, and Mr. Theodore Lumley seconded, "That this society, while appreciating the utility of law classes in connection with some recognised legal institutions, and

while gratefully acknowledging the disinterested and able efforts of Mr. Fraser in bringing the subject before the profession, considers that the formation of such law classes in connection with the society (as best representing the articulated clerks of England and Wales), would be attended with the most beneficial result to the class for which they are intended." After a very spirited discussion, the votes of the meeting were taken, when the amendment was negatived by a majority of one, and the motion subsequently carried by a majority of nine.

Court Papers.

NISI PRIUS SITTINGS, IN AND AFTER
HILARY TERM, 1866.

Court of Queen's Bench.

In Term.

MIDDLESEX.

LONDON.

1st sitting, Thursday, Jan. 12	There will not be any sitting during term in London.
2nd sitting, Monday 16	
3rd sitting, Monday 23	

After Term.

Wednesday Feb. 1 | Monday Feb. 13

The Court will sit at ten o'clock every day.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Court of Common Pleas.

In Term.

MIDDLESEX.

LONDON.

Thursday Jan. 12	The Court will not sit in London during term.
Monday 16	
Monday 23	

After Term.

Wednesday Feb. 1 | Monday Feb. 13

The Court will sit during and after term at ten o'clock.

The causes in the list for each of the above sitting days in term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

Exchequer of Pleas.

In Term.

MIDDLESEX.

LONDON.

1st sitting, Thursday, Jan. 12	The Court will not sit in London during term.
2nd sitting, Monday 16	
3rd sitting, Monday 23	
4th sitting, Monday 30	

After Term.

Wednesday Feb. 1 | Monday Feb. 13

The Court will sit during and after term at ten o'clock.

The Court will sit in Middlesex, in term, by adjournment from day to day, until the causes entered for the respective Middlesex sittings are disposed of.

COMMON-LAW CAUSE LISTS, HILARY TERM,
1866.

Court of Queen's Bench.

NEW TRIALS.

FOR JUDGMENT.

Tried during Term.

Liverp.—Wilson v. Rankin

Midd.—Tennant v. Bankart
(Part heard, stands for arrangement)

FOR ARGUMENT.

Moved Trin. Term, 1862.

Moved Easter Term, 1864.

Ches.—Hughes v. Birkenhead Improvement Commissioners (First action, to be argued with D. To stand over till decision in a similar point in court of error)
 — Same v. Same (Second action, Ditto)
 — Davies v. Same (Ditto)

Moved Mich. Term, 1864.

Midd.—Hall v. Lawrence
 Lincoln—Bills v. Smith
 Durham—Ecclesiastical Commissioners for England v. Peart
 Liverpool—Whitby v. Royden
 — Wilde v. Manchester,

Sheffield, and Lincolnshire Railway Co.
 Liverpool.—Stuart v. Berresford
 York—Ackroyd v. Barningham
 Monmouth—Nott v. Great Western Railway Co.
 — Symonds v. Peckaley (Not to be argued until after the decision of a similar point in Exchequer Chamber)
 Bristol—Prothero v. United Merthyr Collieries Co. (Limited)
 Surrey—Biddle v. Bond
 Leicester—Hightley v. Cumberland
 Camb.—Mainprice v. Westley
 Suffolk—Cowles v. Potts.

SPECIAL PAPER.

Those marked thus * are Special Cases, and thus † Demurrers.

FOR JUDGMENT.

† Wilson v. Rankin
 † Thierry & an. v. Lord Fermoy & an.
 † Lloyd v. Harrison

FOR ARGUMENT.

† Worthington v. Sudlow (Sp. C. to be stated)
 † Moore & ors. v. Stroud (Stands for issues in fact to be tried)
 † Hughes v. Birkenhead Improvement Commissioners (Case in New Trial Paper to be argued with D. To stand over till decision on a similar point in court of error).
 † Same v. Same (Ditto)
 † Davies v. Same (Ditto)
 † Williams v. Booth & an. (Stands for arrangement)
 * Giffard v. Wright (In replevin, stands for arrangement)
 † Offenbacher v. Child
 † Simpson & ors. v. Mount
 † In re R. B. Feather v. Reg.
 * Bryant v. Foot
 † Head v. Bush
 † Jones v. Morris

† Duthie v. Hughes
 † Alexander v. North-eastern Railway Co.
 † Andrew v. Macklin
 Bromhead v. Clark (Appeal from County Court)
 * Regent's Canal Co. v. Commissioners of her Majesty's Works, &c.
 † Mecklenburg v. Gloyne
 † Cooper v. Pell
 * Sumner v. Bromelow
 † Stevens v. Central Wales Railway Co.
 † Newen & an. v. Chapman
 † Thompson v. Gunthorpe
 † Ince v. Pell
 † Channell v. Budd
 † Cusack v. St. David's Gold Mining Co. (Limited)
 Angone v. Tippet (Appeal from County Court)
 † Toleman v. Mitchell
 * Nichols v. Nichols
 † Nichols v. Nichols
 Adcock v. Lawrence (Appeal from Court of Pleas of the borough of Cambridge)
 * Leaf v. Metropolitan Railway Co.
 † Jolwald v. Continental Bank Corporation (Limited).

ENLARGED RULES.

Roberts v. Evans
 In re G. Depruis Wade
 In re F. W. Freeman
 Parsons & an. v. Bagnall
 Same v. Lord Willoughby De Broke
 Same v. Birch
 Same v. Rideout
 Hall v. Clarke
 Haynes v. Croydon

In re Stanton
 In re Stevens v. Parker
 Reg. v. Commissioners for the Reduction of the National Debt
 Reg. v. Price & an.
 Reg. v. Sheriff of Middlesex
 Reg. v. Commissioners of Bradford
 Reg. v. Gaskell.

CROWN PAPER.

Tewkesbury Reg. v. Severn Navigation Commissioners.
 Surrey Mensor. (To stand over till judgment given in the House of Lords in the Mersey Docks case).
 Cornwall Looe Harbour Commissioners v. Churchwardens and Overseers of the Borough

of East Looe. (To stand over till judgment given in the House of Lords).

Devon Bowden v. Clerk of the Peace for the County of Devon.
 Surrey Paw v. Metropolitan Board of Works, and Collins and Howell.
 Weymouth and } Mayor, Aldermen, &c. of the Borough of
 Melcomb Reg. } Weymouth & Melcomb Regis v. Nugent.
 Devonshire Mayor, &c. of South Molton v. Churchwardens of South Molton.
 Lancashire Fox v. Grimshaw.
 Yorkshire Overseers of the Poor of the Township of Huntswick with Toulby and Nostal v. Overseers of the Poor of Morley.
 — Reg. v. Overseers of the Poor of the Township of Calverly with Tarsley.
 Derbyshire Hartley v. Bowlyer.
 Lancashire Bevin v. Bird.
 Yorkshire Trustees, Committee, and Officers of Ilkley Hospital v. Churchwardens and Overseers of the Township of Ilkley.
 Middlesex Tomlins v. Nuisance Removal Committee of Great Stanmore.
 Kent Kenyon v. Hart.
 Great Yarmouth . Reg. v. Newcomb.
 Chester Thorneycroft v. Crawley.
 Cumberland Bell v. Wyndham.
 Southampton ... Ward v. Gray.

Court of Common Pleas.**NEW TRIALS.****FOR ARGUMENT.**

Moved Mich. Term, 1863.
 Midd.—Packer v. The Great Western Railway Co. (To stand over till Beal v. South Devon Railway Co. in Exch. Chamber is disposed of)
Moved Trin. Term, 1864.
 York—Shaw v. Shaw
 Midd.—Clubb v. Hutton
 — Soales v. Shekleton
 Lond.—Roebel v. Saunders
 — Hogg v. Skeen
 — Morris v. Hutchinson
 Nottingh.—Waters v. North
 Manches.—Crabb v. Curtis

Liverp.—Neill v. Whitworth
 — Swire v. Leech

Moved Mich. Term, 1864.
 Liverp.—Farnworth v. Hyde
 Durh.—North-eastern Railway Co.
 Manches.—Fielding v. Lee
 Bedfordsh.—Parker v. Anstee
 Leicester — Bourne v. Fosbrooke
 Cornwall — Gaved v. Martyn
 — Same v. Same

Postponed Motions.

Lond.—Antrobus v. Lee
 — Mallet v. Bateman.

DEMURRER PAPER.**SPECIAL ARGUMENTS.****Monday, Jan. 18.**

Lyne v. Wyatt (D., to stand over for cases in Exchequer Chamber)
 Langmead v. Maple (D.)
 Kilby v. Wright (D.)
 Hodgson v. Moulson (Case by order)
 Laver v. Rickman (D.)
 Langton v. Waring (Case by order)
 Penny v. Brice (Case by arbitration)
 Semenza v. Brinsley (D.)
 Tumvaco v. Lelcan (D.)
 Felsard v. Mugnier (D.)

Sedgwick Gunpowder Co. (Limited) v. Acraman (Case at Nisi Prius)
 Stacey v. Whitehurst (Ap.)
 Eatwell v. Richmend (Ap.)
 Whympster v. Harney (Ap.)

Wednesday, Jan. 18.

Clarke v. Watson (D.)
 Richardson and Wife v. Powers (Case by order)
 Matthey v. Wiseman (D.)
 Grill v. General Iron Screw Collier Co. (Limited) (D.)
 Bullen v. Sharpe (Case at Nisi Prius).

ENLARGED RULES.**First Day.**

In the arbitration between Simpson and Anderton
 Tennant v. Robinson
 Cobbold v. Kitson

Second Day.

Scott v. Durant (in matter of an action in Lord Mayor's Court)
 Stirman v. Gelpcke (Goschen and others garnishees).

CUR. ADV. VULT.

Hobbs v. Henning | Powell v. Farmer
Powell v. Boraston.

Court of Exchequer.

SITTINGS—HILARY TERM.

<i>Days in Term.</i>	<i>Banc.</i>
Wednesday .. Jan. 11	Motions and Peremptory Paper.
Thursday .. 12	Errors, Peremptory Paper, and Motions.
Friday .. 13	.....
Saturday .. 14	.....
Monday .. 16	Special Paper.
Tuesday .. 17	.....
Wednesday .. 18	Special Paper.
Thursday .. 19	Circuits chosen.
Friday .. 20	.....
Saturday .. 21	Criminal Appeals.
Monday .. 23	Special Paper.
Tuesday .. 24	.....
Wednesday .. 25	Special Paper.
Thursday .. 26	.....
Friday .. 27	.....
Saturday .. 28	.....
Monday .. 30	.....
Tuesday .. 31	.....

Days in Term. *Nisi Prius.*

Thursday .. Jan. 12	Middlesex, first Sitting.
Monday .. 16	Middlesex, second Sitting.
Monday .. 23	Middlesex, third Sitting.
Monday .. 30	Middlesex, fourth Sitting.

NEW TRIALS.

FOR JUDGMENT.

Gloucester—Great Western Railway Co. v. Robins
Leeds—Nicholson v. Lancashire and Yorkshire Railway Co.

FOR ARGUMENT.

Moved Hilary Term, 1884.

Liverpool—Brabner v. Macann.

Moved Michaelmas Term, 1884.

Bristol—Brooks & ors. v. Bates

York—Carr v. Lambert & ors.

Stafford—Reay v. Whitehouse.

Moved after the 4th day of Michaelmas Term, 1884.

Middlesex—Campbell v. Loader.

SPECIAL PAPER.

FOR JUDGMENT.

Longland v. Andrews (Special case)

Longland v. Doling (Special case, heard Nov. 7, 1884)

FOR ARGUMENT.

Clark v. Magnus (D., to stand over till after issues in fact tried)

Cooke v. Mostyn (D., Nov. 14, part heard, ordered to stand over till issues in fact tried).

PEREMPTORY PAPER.

To be taken on the first Day of Term after the Motions and to be proceeded with the next Day, if necessary, before the Motions.

In re Tracksell and Clayton v. Wilson (Payment of money under award)

Same v. Same

Hubble v. Bunyard (To set aside writ of ea. sa.)

In re Mayor of Wolverhampton v. Steer (For a writ of prohibition).

Surman v. Almond (For leave to issue a writ of revivor).

ERRORS AND APPEALS.

Thursday, Jan. 12.

FOR JUDGMENT.

Hidson v. Barelay (E., heard Dec. 2, 1884).

FOR ARGUMENT.

Scott v. London and St. Katherine Dock Co. (Ap.)

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An Act to enable the Right Hon. Sir John Laird Mair Lawrence to receive the full Benefit of the Salary of Governor-General of India, notwithstanding his being in receipt of an Annuity granted to him by the East India Company. [18th March, 1864.]

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An Act to apply the Sum of Five Hundred and Eighty-four Thousand Six Hundred and Fifty Pounds out of the Consolidated Fund to the Service of the Year ending the 31st Day of March, 1864. [18th March, 1864.]

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An Act to amend the Law relating to Bills of Exchange and Promissory Notes in Ireland. [28th April, 1864.]

- Sect. 1. Notaries in Ireland not required to keep their offices open from six to nine o'clock in the evening.*
2. Notaries in Ireland not required to attend after six o'clock in the afternoon to receive payment of any bill or note.

Whereas an act was passed in the 9 Geo. 4, c. 24, intituled "An Act to repeal certain Acts, and to consolidate and amend the Laws relating to Bills of Exchange and Promissory Notes in Ireland:" and whereas it is expedient that the said act should be amended, so far as relates to the hours thereby prescribed for keeping open the offices of public notaries in Ireland: be it therefore enacted &c. as follows:—

Sect. 1. From and after the passing of this act, so much of the said act of the 9 Geo. 4, c. 24, as requires that all public notaries practising in Ireland shall keep their offices open from six o'clock in the afternoon until nine o'clock in the evening of any day, shall be, and the same is, hereby repealed.

2. From and after the passing of this act, it shall not be necessary for any notary public in Ireland, or any person for him, at his house or office, to be in attendance after the hour of six o'clock in the afternoon of any day, in order to receive payment of any bill or note; but every such bill or note whereof payment shall not be made, or duly or legally tendered, at or before such hour of six o'clock in the afternoon, shall be considered to be and shall be dishonoured, to all intents and purposes; and thereupon such notary public shall and may note or protest the same for non-payment, any law, statute, or usage to the contrary notwithstanding.

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3. Maltsters under this act to designate their malthouses.
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8. Penalty for separating malt from linseed cake or meal mixed therewith.
9. Persons found unlawfully removing malt from a malt-house entered under this act, to be dealt with in manner directed by sect. 32 of stat. 18 & 19 Vict. c. 94.
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2. Power to issue orders limited.
3. Short titles.

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2. The power of the Poor-law Board to issue any order under this act shall determine on the 1st July next.

3. All acts referred to, and this act, may be cited and described, for all purposes, as "The Union Relief Aid Acts, 1862, 1863, 1864."

CAP. XI.

An Act to apply the Sum of Fifteen Millions out of the Consolidated Fund to the Service of the Year 1864. [28th April, 1864.]

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An Act to amend the Laws relating to the Warehousing of British Spirits. [28th April, 1864.]

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2. How spirits shall be bottled and packed.
3. Bottled spirits may be removed to a ship or to customs warehouse as spirits in casks.
4. Distiller may reduce spirits with water in a warehouse specially approved for that purpose, to any strength at which he might lawfully send the same out of his stock.
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6. Allowance upon the deficiency arising from the vatting of spirits in warehouse increased to one per cent.
7. Duty to be paid on quantity of spirits actually delivered from warehouse, where no fraudulent or improper deficiency.
8. Where any deficiency beyond natural waste is found in spirits in warehouse, the duty on the quantity originally warehoused to be paid immediately.
9. Spirits fraudulently concealed, abstracted, or removed from warehouse to be forfeited, and distiller or proprietor of warehouse to forfeit 200*l*.
10. Distiller or proprietor of spirits or warehouse opening or gaining access to warehouse, except in the presence of an officer, to forfeit 500*l*.
11. British spirits may be removed from excise to customs warehouse, and may be delivered from customs warehouse for home consumption.
12. Allowance of 2*d*. per gallon on British spirits deposited in customs warehouse, not be paid until spirits actually exported.
13. Powers and provisions of Customs Acts to be applied to British spirits warehoused in customs warehouse under this act.
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16. Sects. 129, 132, 133, 134, and 147 of the act 23 & 24 Vict. c. 114, repealed.

CAP. XIII.

An Act to further extend the Time for making Inrolments under the Act passed in the Twenty-fourth Year of the Reign of Her present Majesty, intituled "An Act to amend the Law relating to the Conveyance of Lands for Charitable Uses," and otherwise to amend the said Law.

[13th May, 1864.]

- Sect. 1. *Time for inrolment of deeds and assurances extended to 17th May, 1866.*
2. *Act to apply to separate deeds or instruments referred to.*
 3. *Provision where original deed is lost.*
 4. *Valuable consideration payable as rent to be equivalent to a consideration in money actually paid within the stat. 9 Geo. 2, c. 36.*

Recites 24 & 25 Vict. c. 9, and 25 & 26 Vict. c. 17.

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2. This act shall be taken to apply as well to cases where such separate deed or instrument as is mentioned in the 4th section of the said second act shall be or shall have been executed after, as to cases where it may have been executed before the passing of the said first act; provided only, that if not already executed, it be executed within six calendar months next after the passing of this act.

3. And whereas it may be impossible in some cases to inrol the original deed creating a charitable trust by reason of the same having been lost or destroyed by time or accident, but nevertheless the trusts of such charity may sufficiently appear by some subsequent deed appointing new trustees, or otherwise reciting the trusts created by the original deed: be it enacted, that in every such case it shall be lawful for any trustee or other person interested in such charitable trust to apply by summons in a summary way to the Court of Chancery for an order authorising the inrolment of such subsequent deed; and if the court shall be satisfied, by affidavit or otherwise, that such original deed has been lost or destroyed by time or accident, but that the trusts thereof sufficiently appear by such subsequent deed, then it shall be lawful for the said court to make an order authorising the inrolment of

such subsequent deed; and the inrolment thereof shall have the same force and effect as the inrolment of the original deed would have had if the same had not been lost or destroyed as aforesaid.

4. Every full and bonâ fide consideration within the meaning of the 1st section of the said first act which shall consist either wholly or partly of a rent or other annual payment reserved or made payable to the vendor or grantor, or to any other person, shall, for the purposes of the statute passed in the 9 Geo. 2, c. 36, be as valid and have the same force and effect as if such consideration had been a sum of money actually paid at or before the making of such conveyance without fraud or collusion.

CAP. XIV.

An Act to confirm certain Provisional Orders under the Land Drainage Act, 1861. [13th May, 1864.]

CAP. XV.

An Act for making better and further Provision for the more efficient Dispatch of Business in the High Court of Chancery. [13th May, 1864.]

- Sect. 1. *Appointment of additional chief clerk and assistant clerks to the Master of the Rolls.*
2. *Clerks so appointed may be transferred to any other judge.*
 3. *Vacancies may be supplied.*
 4. *Duties, &c. of the chief and junior clerks.*
 5. *Duties, &c. of assistant clerk.*

Recites 23 & 24 Vict. c. 149, and that assistance of John William Hawkins and John Hockley is required.

Sect. 1. From and after the passing of this act, the said John William Hawkins shall become, and he is hereby appointed, additional chief clerk to the Master of the Rolls and his successors in office; and the said John Hockley shall become, and he is hereby appointed, a junior clerk to such additional chief clerk; and it shall be lawful for the Master of the Rolls to appoint one other junior clerk and one assistant clerk to such additional chief clerk.

2. The Lord Chancellor, with the advice and concurrence of the judge to whom such additional chief clerk and other clerks may for the time being be attached, may transfer from time to time such additional chief clerk and other clerks to any other judge of the said court during such time as he shall think fit.

3. On any vacancy in such office of junior clerk or assistant clerk during the continuance in office of the said John William Hawkins under this act, it shall be lawful for the Master of the Rolls or Vice-Chancellor to whom such additional chief clerk and other clerks at the time of such vacancy happening shall be attached to supply such vacancy: provided always, that in case a new judge shall be appointed in the Court of Chancery, the said John William Hawkins, or other person appointed an additional chief clerk under this act, and the junior and assistant clerks of such chief clerk, shall be transferred to and become the clerks of such judge.

4. Such of the provisions contained in the act of the 15 & 16 Vict. c. 80, as amended by the act of the 18 & 19 Vict. c. 134, and by the said recited act, as relate to the qualification for and removal from office, striking off the roll, tenure of office, attendances, duties, powers, prohibitions, prosecutions, penalties, and punishments, salaries, and annuities, of and respecting the chief clerks and junior clerks by the first two of such acts authorised to be appointed, are hereby extended and applied to and in the case of the chief clerk and junior clerks appointed and to be appointed under this act, so far as the same are consistent with the provisions herein otherwise contained.

5. Every assistant clerk appointed or who shall be appointed under this act shall hold his office at the pleasure of the judge to whose court he shall be attached, and shall be under the control of such judge, and attend at such places, during such times, and for such hours in each day, and perform such duties as such judge shall from time to time direct, and shall receive by way of salary for the performance of his duties such annual sum as the Lord Chancellor and the Commissioners of her Majesty's Treasury shall from time to time fix and determine, and such salary shall grow due and be paid in the manner and out of the fund mentioned in sect. 48 of the act of the 15 & 16 Vict. c. 87.

CAP. XVI.

An Act to confirm the Appointment of Henry Pendock St. George Tucker, Esq., as One of the Judges of Her Majesty's High Court of Bombay, and to establish the Validity of certain Proceedings therein. [13th May, 1864.]

CAP. XVII.

An Act for the Abolition of Vestry Cess in Ireland; and for other Purposes relating thereto. [13th May, 1864.]

Sect. 1. No vestry in Ireland to levy rate after commencement of act.

2. Powers of vestry with respect to deserted children to cease.

3. The acts for relief of destitute poor in Ireland to apply to destitute deserted children.

4. Every vestry clerk, cess collector, beadle, engine keeper, &c., deprived of any salary or emolument by this act to be compensated.

5. Parish officers deprived of salary, fees, &c., to be compensated.

6. Acts and parts of acts in schedule repealed.

CAP. XVIII.

An Act to grant certain Duties of Customs and Inland Revenue. [13th May, 1864.]

Sect. 1. There shall be charged, collected, and paid, for the use of her Majesty, her heirs and successors, the several rates and duties of customs, excise, stamps, and income tax, respectively specified and contained in the several schedules marked respectively (A.), (B.), (C.), and (D.) to this act annexed, and there shall be allowed the several drawbacks specified and contained in the said Schedule (A.); and the said rates, duties, and drawbacks shall respectively take effect at or from the respective times, and shall continue to be charged, collected, paid, and allowed for and during the periods respectively specified or mentioned in that behalf in this act or in the said schedules, and where no time is so specified for the commencement thereof the same shall commence and take effect from and after the passing of this act, and where no period is so specified or limited for the duration thereof the same shall continue to be charged, collected, paid, and allowed respectively until Parliament shall otherwise order; and the said several schedules shall be deemed to be part of this act.

2. Provisions of former acts to apply to this act.

Customs.

3. Commissioners of Customs to provide standard samples of sugar for assessing duty.

4. Sect. 4 of the 18 & 19 Vict. c. 97, repealed.

Excise Licenses.

5. Occasional licenses may be granted to persons who have taken out licenses under the 23 & 24 Vict. cc. 27 and 107 (refreshment houses and wine retailers); under the 4 & 5 Vict. c. 85 (beer retailers); and under the 6 Geo. 4, c. 81 (tobacco retailers).

6. Tea license at reduced rate to be granted only on overseer's certificate of rating.

7. Penalty on overseer, &c. refusing to grant certificate.

8. Half-yearly licenses may be granted to hawkers.

Stamp Duties.

9. For the purposes of this act with respect to the duty on insurances against loss or damage by fire, "stock-in-trade" shall be understood and deemed to mean goods, wares, and merchandise in the possession of the manufacturer thereof for sale, or in the possession of any manufacturer as materials to be used for the purpose, or in the process of any manufacture, or in the possession of any trader for sale in the course of his trade, or in the possession of any person on behalf of such manufacturer or trader, or in the possession of a licensed pawnbroker, being goods received by him in pledge.

10. In every policy by which any insurance from loss or damage by fire shall be made or renewed upon any stock-in-trade, machinery, implements, or utensils, subject to the reduced rate of yearly per-centage-duty by this act imposed, such stock-in-trade, machinery, implements, and utensils, and the sum or sums insured thereon, shall be specified and set forth separately from all other property on which any in-

surance shall be made by the same policy, and the quarterly accounts required by law to be kept and rendered by persons, corporations, and companies insuring against fire shall contain a separate and distinct account of all such insurances as aforesaid, and of the sums insured thereby respectively, and all other particulars relating thereto required by law to be specified or contained in such quarterly accounts: provided that where in any policy existing at the time of the passing of this act property insured subject to the said reduced rate of duty shall not be separately and distinctly specified as herein required, it shall be lawful to distinguish the same and the sum or sums insured thereon by any memorandum to be written or indorsed in or upon such policy.

11. Whereas by an act passed in the 13 & 14 Vict. c. 97, certain ad valorem stamp duties were granted and made payable under the head of "settlement" in the schedule thereto in respect of any definite and certain principal sum or sums of money, and any definite and certain share or shares in any of the Government or Parliamentary stocks or funds, or in the stocks and funds of the Governor and Company of the Bank of England, or of the Bank of Ireland, or of the East India Company, or of the South Sea Company, or of any other company or corporation: and whereas it is expedient to explain and amend the said act as hereinafter mentioned; be it enacted, that the said duties so granted and made payable as last aforesaid shall be deemed to extend to and shall be chargeable upon or in respect of any definite and certain principal sum or sums of money of any denomination or currency, whether British, foreign, or colonial, and any definite and certain share or shares in the stocks or funds of any foreign or colonial Government, state, corporation, or company whatsoever, as well as upon or in respect of the shares, stocks, and funds specified in the said last-mentioned schedule.

12. And where any principal sum of money secured or contracted for by or which may become due or payable upon any bond, debenture, policy of insurance, covenant, or contract, shall be settled or agreed to be settled, or such bond, debenture, policy, covenant, or contract, shall be settled, or assigned or transferred by way of settlement, or shall be agreed so to be, then and in any of such cases the same shall be deemed to be a settlement of such principal sum of money, and shall be chargeable with the said ad valorem stamp duties on the amount thereof accordingly: provided always, that where the subject of any settlement shall be a policy of insurance, then, if there shall not be any certain covenant, contract, or provision made for keeping up such policy, or for paying the premiums which may become payable in that behalf, the said ad valorem duty shall be chargeable only on the value of such policy at the date of such settlement.

13. And where the subject of any settlement chargeable with the said duties shall be any share or shares in any such stocks or funds as aforesaid, or any sum or sums of money secured by any foreign or colonial bond, debenture, or other security bearing a marketable value in the English market, then the value of such share or shares, and of such bond, debenture, or other security respectively, shall be ascertained and determined by the average selling price thereof on the day or on either of the ten days preceding the day of the date of the deed or instrument of settlement, or if no sale shall have taken place within such ten days, then according to the average selling price thereof on the day of the last preceding sale, and the said ad valorem duties shall be chargeable on such settlement in respect of the value so ascertained and determined; and the value of any sum or sums of money expressed in coin of a foreign or colonial denomination or currency shall be determined by the current rate of exchange on the day of the date of the deed or instrument of settlement, and the said ad valorem duties shall be chargeable in respect of the value so determined as last aforesaid.

14. The stamp duty by this act imposed on a voting paper, as described in Schedule (C.) to this act, may be denoted by an adhesive stamp, in like manner as the stamp duty on an instrument appointing a proxy; and all provisions and regulations relating to the particulars to be inserted in such last-mentioned instrument, or to the cancelling or obliterating an adhesive stamp affixed thereto, and all penalties for any neglect or omission to comply with any such provisions or regulations, or for making or signing any such instrument on paper not duly stamped, or for voting or attempting to vote

under any such instrument not duly stamped, shall be deemed to apply, and shall be observed and enforced, *mutatis mutandis*, in relation to any such voting paper as aforesaid.

Income Tax.

15. And whereas, under and by virtue of the 40th section of the act passed in the 16 & 17 Vict. c. 34, persons liable to the payment of rent, yearly interest, or any annuity or other annual payment therein mentioned, are entitled and authorised, on making such payment, to deduct and retain thereout the amount of the rate of income tax which shall be payable at the time when such payment becomes due: be it enacted, that the persons liable to and making any such payment as aforesaid shall be entitled, and are hereby authorised, to deduct and retain thereout the amount of the rate, or a proportionate amount of the several rates, of income tax which were chargeable by law upon or in respect of such rent, interest, annuity, or other annual payment, or the source thereof, during the period through which the same was accruing due, anything in the said recited act to the contrary notwithstanding.

SCHEDULE (C.)

Containing the Duties of Stamps granted by this Act in lieu of the Stamp Duties now chargeable on the several Instruments, Matters, and Things in this Schedule mentioned.

Fire Insurance.

In lieu of the yearly per-centage duty now chargeable for or in respect of any insurance from loss or damage by fire only, which shall be made or renewed on or after the 25th June, 1864, of or upon any goods, wares, or merchandises, being stock-in-trade, or of or upon any machinery, fixtures, implements, or utensils used for the purpose of any manufacture or trade, there shall be charged and paid yearly a duty at and after the rate of 1s. 6d. per annum for every 100*l.* insured; and when any such insurance as aforesaid shall be made or renewed at any time between the 22nd April, 1864, and the said 25th June, for any period of time extending beyond the said last-mentioned day, there shall be charged and paid for and in respect of the time intervening between the making or renewing of the said insurance and the said 25th June, the yearly per-centage duty at and after the rate chargeable on the said 22nd April, and for and in respect of any subsequent period, including the said 25th June, the rate of duty chargeable according to this resolution; and no return or allowance of duty, except at and after the last-mentioned rate, shall be made in respect of time unexpired, or otherwise, on any such insurance as aforesaid which shall have been made or renewed before the said 22nd April, 1864.

Letters or Powers of Attorney, Proxies, &c. (that is to say)—

For and upon any letter or power of attorney:

For the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds:

If the value of such stocks or funds shall exceed 20*l.* £1 0 0

And if such value shall not exceed 20*l.* 0 5 0

For the receipt of dividends or interest of any of the Government or Parliamentary stocks or funds, or of the stocks, funds, or shares of or in any joint-stock company, or other company or society, whose stocks or funds are divided into shares and transferable:—

If the same shall be for the receipt of one payment only £0 1 0

And if the same shall be for a continuous receipt, or for the receipt of more than one payment 0 5 0

For the receipt of any sum of money, or any cheque, note, or draft for any sum of money not exceeding 20*l.* (except in the cases aforesaid), or any periodical payment (other than as aforesaid), not exceeding the annual sum of 10*l.* 0 5 0

Letter or power of attorney, commission, factory, mandate, or other instrument in the nature thereof:—

For the sole purpose of appointing, nominating, or authorising any person to vote as a proxy or otherwise at one meeting of the proprietors or shareholders of any joint-stock or other company, or of the members of any society or

institution, or of the contributors to the funds thereof, or at one meeting of any body exercising a public trust, in the United Kingdom, or to vote at one parish meeting of heritors or proprietors of real or heritable property in Scotland £0 0 1

Voting paper (that is to say),

Any instrument for the purpose of voting by any person entitled to vote at any such meeting as aforesaid in any part of the United Kingdom 0 0 1

For and upon any letter or power of attorney made by any petty officer, seaman, marine, or soldier serving as a marine, or by the executors or administrators of any such person:—

For receiving prize money or wages .. £0 1 0

For and upon any letter or power of attorney of any other kind or commission or factory in the nature thereof 1 10 0

Exemptions.

Any letter of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend of less than 3*l.*

Any letter or power of attorney or proxy filed in any Ecclesiastical Court.

Appointments to Ecclesiastical Benefices, &c.

For and upon any donation or presentation, by whomsoever made, of or to any ecclesiastical benefice, dignity, or promotion:

Also for and upon any collation by any archbishop or bishop, or by any other ordinary or competent authority, to any ecclesiastical benefice, dignity, or promotion:

Also for and upon any institution granted by any archbishop, bishop, chancellor, or other ordinary, or by the ecclesiastical court, to any ecclesiastical benefice, dignity, or promotion, proceeding upon the petition of the patron to be himself admitted and instituted, and not upon a presentation:

Also for and upon any nomination by her Majesty, her heirs or successors, or by any other patron, to any perpetual curacy:

Also for and upon any license to hold a perpetual curacy not proceeding upon a nomination:

Where the net yearly value of such benefice, dignity, promotion, or perpetual curacy—

Shall exceed 50*l.* and not exceed 100*l.* .. £1 0 0

“ 100*l.* “ 150*l.* .. 2 0 0

“ 150*l.* “ 200*l.* .. 3 0 0

“ 200*l.* “ 250*l.* .. 4 0 0

“ 250*l.* “ 300*l.* .. 5 0 0

And where such value shall exceed 300*l.* .. 7 0 0

And also (where such value shall exceed 300*l.*) for every 100*l.* thereof over and above the first 200*l.*, a further duty of 5 0 0

Note.—The yearly value of such benefice, dignity, promotion, or perpetual curacy in any and every of the cases aforesaid, to be ascertained and determined by the certificate of the Ecclesiastical Commissioners for England and Ireland respectively, to be written on the instrument charged with duty; provided always, that two or more benefices, or a benefice and any other ecclesiastical preferment episcopally or permanently united shall be deemed one benefice only.

Also for and upon any collation, institution, or admission by any presbytery or other competent authority to any ecclesiastical benefice in Scotland £2 0 0

Exemptions.

1. Any collation or appointment by any archbishop or bishop to any cathedral, prebend, dignity, or honorary canonry having no endowment or emolument attached thereto.
2. Any institution proceeding upon a presentation.
3. Any license to hold a perpetual curacy proceeding upon a nomination.

SCHEDULE (D.)

Containing the Rates and Duties of Income Tax granted by this Act.

For one year commencing on the 6th April, 1864, for and in respect of all property, profits, and gains mentioned or described as chargeable in the act passed in the 16 & 17 Vict. c. 34, for granting to her Majesty duties on profits arising from property, professions, trades, and offices, the following rates and duties; (that is to say),

For every 20s. of the annual value or amount of all such property, profits, and gains (except those chargeable under Schedule (B.) of the said act), the rate or duty of 6d.

And for and in respect of the occupation of lands, tenements, hereditaments, and heritages chargeable under Schedule (B.) of the said act, for every 20s. of the annual value thereof—

In England the rate or duty of 3d.:

And in Scotland and Ireland respectively the rate or duty of 2½d.:

Subject to the provisions contained in sect. 3 of an act passed in the last session of Parliament, c. 22, for the exemption of persons whose whole income from every source is under 100l. a year, and the relief of those whose income is under 200l. a year.

CAP. XIX.

An Act to enable Joint-stock Companies carrying on Business in Foreign Countries to have Official Seals to be used in such Countries. [13th May, 1864.]

Sect. 1. *Short title.*

2. *Power to companies to have an official seal.*

3. *Power to companies to appoint agents abroad to affix seals.*

4. *As to the duration of powers granted under sect. 3 of this act.*

5. *Person affixing seal to document to certify the date when so affixed.*

6. *Companies not to exercise powers of act unless authorised.*

7. *Sect. 55 of the 25 & 26 Vict. c. 89, not repealed.*

Sect. 1. This act may be cited for all purposes as "The Companies Seals Act, 1864."

2. Any company, under the Companies Act, 1862, whose objects require or comprise the transaction of business, as hereinbefore mentioned, in foreign countries, may cause to be prepared an official seal for and to be used in any place, district, or territory situate out of the United Kingdom in which the business of the company shall be carried on, and every such official seal may and shall be a fac-simile of or as nearly as practicable a fac-simile of the common seal of the company, with the exception that on the face thereof shall be inscribed the name of each and every place, district, or territory in and for which it is to be used: provided that it shall be lawful for any such company as aforesaid from time to time to break up and renew any official seal or seals, and to vary the limits within which it is intended to be used.

3. Every company having or using any such official seal as is authorised by this act may from time to time, by any instrument or instruments in writing under the common seal of the company, empower any agent or agents specially appointed for the purpose, or any local agent, board, committee, manager, or commissioner appointed under the provisions of the articles of association of such company, in any place, district, or territory situate out of the United Kingdom where the business of the company shall for the time being be carried on, to affix such official seal to any deed, contract, or other instrument to which the company is or shall be made a party in such place, district, or territory, and no other order of the company or the board of directors thereof shall be necessary to authorise any such seal to be affixed to any deed, contract, or other instrument.

4. Every power granted under the last preceding section shall, as between the company, their successors and assigns, on the one hand, and the person or persons dealing with the agent or agents, board, committee, manager, or commissioner named in the instrument conferring the power, and all parties claiming through or under such person or persons, on the other hand, continue in force during the period, if any,

mentioned in the instrument conferring the power, or if no power be there mentioned, then until notice of the revocation or determination of the power shall have been given to such person or persons as aforesaid.

5. Whenever any such official seal as aforesaid shall be affixed to any document, the person affixing the same shall, by writing under his hand, and written on the document to which the seal may have been affixed, certify the date when and the place where the same was affixed; and any document to which any such seal shall have been duly affixed within the district or territory or place the name whereof is inscribed on such seal shall bind the company in the same way and to the same extent, and have the same force and effect, as if it had been duly sealed with the common seal of the company.

6. The powers given by this act shall be exercised by such companies only as are or shall be expressly authorised to exercise the same by their articles of association, or a special resolution passed according to the provisions of the Companies Act, 1862, and shall be exercised by such companies subject to any directions or restrictions in their articles of association, or the special resolutions contained.

7. Nothing in this act contained shall operate to repeal the provisions of the 55th section of the Companies Act, 1862; but such section shall continue in force, and all acts done or to be done thereunder shall be as valid and effectual as if this act had not been passed.

CAP. XX.

An Act to remove certain Restrictions on the Negotiation of Promissory Notes and Bills of Exchange under a limited Sum in Ireland. [13th May, 1864.]

Sect. 1. *So much of stat. 8 & 9 Vict. c. 37, as prohibits or restrains the negotiation in Ireland of notes and bills under 5l. repealed.*

2. *Term of this act.*

Sect. 1. From and after the passing of this act, so much and such parts of an act passed in the 8 & 9 Vict. c. 37, as prohibits the drawing, making, and issuing, or restrains or imposes any penalty for or on account of the publishing, uttering, or negotiating in Ireland of any promissory or other note (not being a note payable to bearer on demand), bill of exchange, draft, or undertaking in writing, being negotiable or transferable, for the payment of 20s., or above that sum and less than 5l., or on which 20s., or above that sum and less than 5l., shall remain undischarged, made, drawn, or indorsed in any other manner than is directed by the said act, or which requires or directs that all such notes, bills, drafts, or undertakings as aforesaid which shall be issued in Ireland, shall be made, drawn, or indorsed according to the forms contained in the schedules to the said act, shall be, and the same is and are, hereby repealed.

2. This act shall continue in force for two years, and until the end of the next ensuing session of Parliament.

CAP. XXI.

An Act to indemnify certain Persons from any penal Consequences which they may have incurred by sitting and voting as Members of the House of Commons while holding the Office of Under Secretary of State. [23rd June, 1864.]

Sect. 1. Under Secretaries of State herein named indemnified;

2. And may plead the general issue on any action or suit already commenced.

CAP. XXII.

An Act to amend the Laws which regulate the Registration of Parliamentary Voters in Counties in Ireland. [23rd June, 1864.]

Sect. 1. Duty of the clerk of the peace as to additional polling places created under the first-recited act.

2. Duty of the clerk of the peace as to new or altered polling districts. Duty of the clerk of the poor-law union to write on the margin of the registry the name of the parish or other division in the polling district in respect of property wherein the name of the voter is on the list; and also on the supplemental lists.

3. Notice of claims to vote under the 13 & 14 Vict. c. 69,

to be given by the clerks of the peace. How notices of claims to vote are to be given by the clerk of the peace under this act. Form of notice by claimant under this act. Omission to serve notice by claimant in the form under this act not to deprive him of his right to be inserted on the list.

4. Notices of objection, and lists of persons objected to, shall be given under this act.

5. Clerks of the peace shall prepare alphabetical lists of voters in each polling district.

6. Such alphabetical lists to be the lists of voters in such polling district for the purposes hereinafter mentioned.

7. Lists of voters to be revised by the chairman of quarter sessions for each polling district in like manner as provided by the 13 & 14 Vict. c. 69. Power of the said chairman to amend mistakes in the lists.

8. Separate lists of the polling districts to be numbered, arranged, and printed. How to be indorsed.

9. When new polling districts have been formed, or former polling districts altered, before this act, under the 25 & 26 Vict. c. 62, clerk of the peace to send a copy of the present register of voters to each clerk of poor-law unions in the district. Duty of the clerk of the poor-law union.

10. Clerk of the peace to make out alphabetical lists for each polling district, and print and publish them.

11. Duty of the assistant barrister to revise the lists. Court of revision, where to be holden. Notice of the time and place for holding the court to be given.

12. Revised lists to be separately printed and arranged for each polling district.

13. The first register of voters after the passing of this act to be the register from the 30th November next after its formation, and the 1st December in succeeding year.

14. Future revisions under the 13 & 14 Vict. c. 69.

15. Duty of the clerk of the peace at the court of revision. Clerk of the poor-law unions to attend courts of revision.

16. Court of revision to be deemed a court of revision under the 13 & 14 Vict. c. 69, and a court of record.

17. Power to adjourn courts of revision.

18. Compensation to clerks of unions for additional duties under this act.

19. Expenses incurred by the clerk of the peace in carrying into effect this act provided for by presentment.

20. Interpretation of terms.

21. Stat. 43 & 14 Vict. c. 69, incorporated with this act.

CAP. XXIII.

An Act to repeal Enactments relating to Naval Prize of War, and Matters connected therewith or with the Discipline or Management of the Navy. [23rd June, 1864.]

Sect. 1. Enactments described in schedule to this act (subject to exceptions, &c.) repealed.

2. Commencement.

3. Short title.

CAP. XXIV.

An Act to provide for the Appointment, Duties, and Remuneration of Agents for Ships of War, and for the Distribution of Salvage, Bounty, Prize, and other Money among the Officers and Crews thereof. [23rd June, 1864.]

Sect. 1. *Short title.*

2. *Interpretation of terms.*

3. *Power for Admiralty to apply act to any of her Majesty's ships.*

4. *Each of her Majesty's ships to have an agent.*

5. *Ship's agent to be appointed by commanding officer.*

6. *Instrument of appointment to be registered and filed.*

7. *Persons in service of Crown, proctors, &c., incapable of being agents.*

8. *Partnership body may be a ship's agent.*

9. *Change of commanding officer.*

10. *Office of ship's agent.*

11. *Ship's agent to be amenable to High Court of Admiralty.*

12. *Ship's agent to act for ship with respect to salvage, bounty, prize, &c.*

13. *Taxation and payment of costs of officers and crew, agents, &c.*

14. *Salvage, bounty, prize, and other money to be distributed according to Order in Council, &c.*

15. *Payment of shares.*

16. *Exemption from stamp duty.*

17. *Forfeited shares and deduction of 5l. per cent. to be carried to naval prize cash balance.*

18. *Agent may be furnished with copies of accounts.*

19. *Agent to receive per-centage of 2l. 10s. per cent.*

20. *Apportionment of per-centage where more than one ship, or on change of agent.*

21. *Power to Admiralty to direct investment pending distribution.*

22. *Power to High Court of Admiralty to decide questions relative to distribution, &c.*

23. *Savings rights of the Crown, captors, &c.*

24. *Not to affect appointments of agents under 26 & 27 Vict. c. 116.*

25. *Power to make Orders in Council.*

26. *Orders in Council to be gazetted, &c.*

27. *Commencement of act.*

Be it enacted, &c., as follows:—

Preliminary.

Sect. 1. This act may be cited as "The Naval Agency and Distribution Act, 1864."

2. In this act—

The term "the Lords of the Admiralty," means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral:

The term "the High Court of Admiralty," means the High Court of Admiralty of England:

The term "ship of war," includes vessel of war:

The term "officers and crew," includes all flag officers, commanders, and other officers, engineers, seamen, marines, soldiers, and others on board any of her Majesty's ships of war.

3. Any ship or vessel belonging to her Majesty, and in actual service (other than a ship of war), may be declared by the Lords of the Admiralty to be a ship of war for the purposes of this act: and all the provisions of this act shall thereupon apply to such ship or vessel, and shall continue so to apply as long as she then continues in actual service, but no longer.

Appointment of Ship's Agent.

4. Each of her Majesty's ships of war shall at all times while in commission have, for the purposes of this act, an agent, styled the ship's agent, to be appointed in the first instance as soon as may be after the ship is put in commission, and afterwards, from time to time, as a vacancy in the office or other occasion may require.

5. The ship's agent shall be appointed from time to time at pleasure by the commanding officer of the ship for the time being, by an instrument signed and attested in the form given in the schedule to this act.

6. Any such instrument shall not have effect unless and until it is filed in the registry of the High Court of Admiralty, having been previously registered in the office of the Accountant-General of the Navy.

An official copy of any such instrument under the seal of the High Court of Admiralty shall be conclusive evidence thereof.

7. A person holding any office or employment in her Majesty's service or under the Crown, or a proctor, attorney, or solicitor, shall not be capable of being a ship's agent.

If any person being a ship's agent accepts any such office or employment, or becomes a proctor, attorney, or solicitor, his appointment as ship's agent shall be thereby vacated.

8. A partnership body, not incorporated, may be appointed a ship's agent; and in that case the partners for the time being, or any one or more of them, may act as the agent; and any change of partners shall not affect the appointment.

The names of the partners shall, at the time of appointment, and from time to time on any change happening, be registered in the office of the Accountant-General of the Navy, and in the registry of the High Court of Admiralty.

9. The appointment of the ship's agent shall not be affected by a change of the commanding officer of the ship.

10. The ship's agent shall at all times have an office or place of business within five miles of the General Post-office, London.

11. The ship's agent shall be subject to the jurisdiction and authority of the High Court of Admiralty as if he were an

officer of the court, and in case of any neglect or misconduct on his part shall be liable to be proceeded against and punished accordingly.

Duties of Ship's Agent.

12. It shall be the duty of the ship's agent, by himself or by a proper sub-agent appointed and remunerated by him, to take or cause or procure to be taken all steps and proceedings, and do or cause or procure to be done all things, that may be necessary or proper to be taken or done for any purpose on behalf or in the name of the ship or of the officers and crew thereof, or any of them, in the several cases following:—

In case of salvage services rendered to any ship or cargo, or otherwise, within the meaning of the enactments for the time being in force relating to merchant shipping:

In case of any breach of any law respecting national character or otherwise relating to merchant shipping:

In case of any seizure for breach of any law relating to the customs:

In case of any seizure or capture under any act relating to the abolition of the slave trade:

In case of any matter arising out of an attack on or engagement with persons alleged to be pirates, afloat or on shore:

In case of any capture, recapture, or destruction of any ship, goods, or thing in time of war or hostilities:

In case of any special service or other matter in respect whereof any grant, reward, or remuneration is payable.

Distribution of Salvage, Bounty, Prize, and other Money.

13. Where in any of the several cases aforesaid any money is distributable among the officers and crew of any of her Majesty's ships of war, the costs, charges, and expenses of the officers and crew and of the ship's agent, and all other (if any) costs, charges, or expenses properly chargeable against that money, shall be paid thereout before distribution thereof, all such costs, charges, and expenses being first taxed and allowed by the proper officer of the court having jurisdiction in the case, and if there is no such court then by the registrar of the High Court of Admiralty.

14. In the several cases aforesaid, money distributable among the officers and crew of any of her Majesty's ships of war, so far as full provision respecting the distribution thereof is not made by or under any act of Parliament other than this act, shall be distributed under the direction of the Lords of the Admiralty in the shares in that behalf specified in any royal proclamation or order in council.

15. The several shares of any such money as aforesaid shall be paid to the persons entitled thereto in such manner, and subject and according to such restrictions, conditions, and provisions, as may from time to time be directed by Order in Council.

Any assignment, sale, or contract of or relating to any such money as aforesaid, payable in respect of the services of any petty officer or seaman, non-commissioned officer of marines or marine, other than such as may be made or entered into under the authority of and in conformity with any such Order in Council, shall be void.

16. All bills, orders, receipts, and other instruments drawn, given, or made under the authority or in pursuance of any such Order in Council by, to, or upon any officer or person in the service of her Majesty or of the Lords of the Admiralty, shall be exempt from stamp duty.

17. All forfeited and unclaimed shares and balances of prize money, and a per-centage of 5*l.* in every 100*l.* out of the proceeds of all prizes, and out of all grants to the royal navy and marines, and out of all bounty money, and also out of all other money distributable in the several cases aforesaid among the officers and crew of any of her Majesty's ships of war out of which such per-centage is at the commencement of this act by law deducted, shall, under the direction of the Lords of the Admiralty, continue to be carried to and to form part of the naval prize cash balance.

So much of the naval prize cash balance as the Lords of the Admiralty think expedient shall from time to time by her Majesty's Paymaster-General, under the authority and direction of the Lords of the Admiralty, be paid and transferred to the Consolidated Fund of the United Kingdom.

In case at any time a claim in respect of prize or bounty money is made which the naval prize cash balance is not

sufficient to meet, there shall be paid out of the said Consolidated Fund a sufficient sum to meet such claim.

18. A ship's agent shall be entitled, on request, and on payment of reasonable expenses, to be furnished with copies of, or extracts from, any official accounts kept under or for the purposes of this act in relation to any of her Majesty's ships of war for which he is agent.

Remuneration of Ship's Agent.

19. Before any such money as aforesaid is distributed among the officers and crew of any of her Majesty's ships of war, there shall be paid, under the direction of the Lords of the Admiralty, to the ship's agent a per-centage of 2*l.* 10*s.* per cent. on the net amount actually distributable, as the sole and full remuneration of the ship's agent for his services in the case.

20. In the following cases—

Where more than one of her Majesty's ships of war are entitled to participate in any such money—

Where the ship's agent is changed pending proceedings—the ship's agent's per-centage shall, in case of difference, be apportioned between or among the respective agents of the several ships, or the several persons having been and being the ship's agent (as the case may be), in such manner as the registrar of the High Court of Admiralty thinks just, having regard to the duration and character of the services of the several agents in the case, subject to objection to the registrar's award to be taken before the judge of the court.

Investment of Salvage, Bounty, Prize, and other Money.

21. Any money for the time being awaiting distribution, but for any reason not immediately distributable as aforesaid, may, under the direction of the Lords of the Admiralty, be invested in or on any proper stocks, funds, or securities; and the proceeds of those stocks, funds, or securities, and any dividends or interest accrued due thereon, shall be distributed as the money invested would have been distributed if an investment had not been made:

Provided that no such investment shall be made of any money pending any adverse claim thereto, except with the consent of the claimant.

Decision as to Distribution or Investment.

22. Where any question (whether in respect of asserted joint capture, or in respect of flag shares, or in respect of any other matter) arises concerning the distribution of any money distributable as aforesaid, or concerning any investment thereof, actual or intended, the High Court of Admiralty shall have exclusive jurisdiction to hear and determine the same; and any person claiming an interest in such money, or the Lords of the Admiralty, may apply to the High Court of Admiralty for a judgment on that question; and the court, after hearing the parties interested, shall decide thereon, and such decision shall be final, and shall be binding on all persons concerned.

Miscellaneous.

23. Nothing in this act shall—

(1). authorise a ship's agent or his sub-agent to practise or act as a proctor, attorney, solicitor, or other legal practitioner in any court; or

(2). affect the right or power of the officers and crew of any of her Majesty's ships of war as salvors, seizers, captors, recaptors, or otherwise, or of any of such officers and crew, to take, or cause or procure to be taken, any step or proceeding, or do, or cause or procure to be done, anything that may be necessary or proper to be taken or done for any purpose in any court or elsewhere, in case of the absence or default of the ship's agent; or

(3). affect any right or power of control, or other authority, that her Majesty has or may exercise in any prize cause or other proceeding.

24. Nothing in this act shall invalidate an appointment of an agent made before the commencement of this act, under the Navy Prize Agents Act, 1863; but every agent so appointed shall, from the commencement of this act, be subject to this act, as if he were appointed under it.

25. Her Majesty in Council may from time to time make such Orders as seem meet for the better execution of this act.

26. Every Order in Council under this act shall be published in the London Gazette, and shall be laid before both

Houses of Parliament within thirty days after the making thereof, if Parliament is then sitting; and if not, then within thirty days after the next meeting of Parliament.

27. This act shall commence on such day not later than the 1st January, 1865, as her Majesty in Council thinks fit to direct.

SCHEDULE.

Form of Appointment of Ship's Agent.

I [name of officer], commanding officer of her Majesty's [description and name of ship], hereby appoint [name of agent], of [address of agent], to be the ship's agent for the purposes of the Naval Agency and Distribution Act, 1864.

Dated the — day of —.

(Signed) A. B.

Witness,

(Signed) C. D.

CAP. XXV.

An Act for regulating Naval Prize of War.

[23rd June, 1864.]

Sect. 1. *Short title.*

2. *Interpretation of terms.*
3. *High Court of Admiralty and other courts to be prize courts for purposes of act.*
4. *Jurisdiction of High Court of Admiralty.*
5. *An appeal to Queen in Council, in what cases.*
6. *Jurisdiction of Judicial Committee in prize appeals.*
7. *Custody of processes, papers, &c.*
8. *Limit of time for appeal.*
9. *Enforcement of orders of High Court, &c.*
10. *Salaries of judges of Vice-Admiralty Prize Courts.*
11. *Retiring pensions of judges, as in the 22 & 23 Vict. c. 26.*
12. *Returns from Vice-Admiralty Prize Courts.*
13. *General Orders for prize courts.*
14. *Prohibition of officer of prize court acting as proctor, &c.*
15. *Prohibition of proctors being concerned for adverse parties in a cause.*
16. *Custody of prize ship.*
17. *Bringing in of ship papers.*
18. *Issue of monition.*
19. *Examinations on standing interrogatories.*
20. *Adjudication by court.*
21. *Further proof.*
22. *Custody, &c. of ships of war.*
23. *Entry of claim; security for costs.*
24. *Power to court to direct appraisement.*
25. *Power to court to direct delivery to claimant on bail.*
26. *Power to court to order sale.*
27. *Sale on condemnation.*
28. *How sales to be made.*
29. *Payment of proceeds to Paymaster-General or official accountant.*
30. *One adjudication as to several small ships.*
31. *Application of foregoing provisions to prize goods.*
32. *Power to court to call on captors to proceed to adjudication.*
33. *Person intervening on appeal to enter claim.*
34. *Jurisdiction of prize court in case of capture in land expedition.*
35. *Jurisdiction of prize court in case of expedition with ally.*
36. *Restriction on petitions by asserted joint captors.*
37. *In case of offence by captors, prize to be reserved for Crown.*
38. *Purchase by Admiralty for public service of stores on board foreign ships.*
39. *Prizes taken by ships other than ships of war to be droits of Admiralty.*
40. *Salvage to recaptors of British ship or goods from enemy.*
41. *Permission to recaptured ship to proceed on voyage.*
42. *Prize bounty to officers and crew present at engagement with an enemy.*
43. *Ascertainment of amount of prize bounty by decree of prize court.*
44. *Payment of prize bounty awarded.*

45. *Power for regulating ransom by Order in Council.*
46. *Punishment of masters of merchant vessels under convoy disobeying orders or deserting convoy.*
47. *Prize ships and goods liable to duties and forfeiture.*
48. *Regulations of customs to be observed as to prize ships and goods.*
49. *Power for Treasury to remit customs duties in certain cases.*
50. *Punishment of persons guilty of perjury.*
51. *Actions against persons executing act not to be brought without notice, &c.*
52. *Jurisdiction of High Court of Admiralty on petitions of right in certain cases, as in the 23 & 24 Vict. c. 34.*
53. *Power to make Orders in Council.*
54. *Order in Council to be gazetted, &c.*
55. *Not to affect rights of Crown; effect of treaties, &c.*
56. *Commencement of act.*

Whereas it is expedient to enact permanently, with amendments, such provisions concerning naval prize, and matters connected therewith, as have heretofore been usually passed at the beginning of a war: be it therefore enacted &c., as follows:—

Preliminary.

Sect. 1. This act may be cited as "The Naval Prize Act, 1864."

2. In this act—

The term "the Lords of the Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the Office of Lord High Admiral: The term "the High Court of Admiralty" means the High Court of Admiralty of England:

The term "any of her Majesty's ships of war" includes any of her Majesty's vessels of war, and any hired armed ship or vessel in her Majesty's service:

The term "officers and crew" includes flag officers, commanders, and other officers, engineers, seamen, marines, soldiers, and others on board any of her Majesty's ships of war:

The term "ship" includes vessel and boat, with the tackle, furniture, and apparel of the ship, vessel, or boat:

The term "ship papers" includes all books, passes, sea briefs, charterparties, bills of lading, cockets, letters, and other documents and writings delivered up or found on board a captured ship:

The term "goods" includes all such things as are by the course of Admiralty and law of nations the subject of adjudication as prize (other than ships).

I.—PRIZE COURTS.

3. The High Court of Admiralty, and every Court of Admiralty or of Vice-Admiralty, or other court exercising Admiralty jurisdiction in her Majesty's dominions, for the time being authorised to take cognisance of and judicially proceed in matters of prize, shall be a prize court within the meaning of this act.

Every such court, or other than the High Court of Admiralty, is comprised in the term "Vice-Admiralty Prize Court," when hereafter used in this act.

High Court of Admiralty.

4. The High Court of Admiralty shall have jurisdiction throughout her Majesty's dominions as a prize court.

The High Court of Admiralty as a prize court shall have power to enforce any order or decree of a Vice-Admiralty Prize Court, and any order or decree of the Judicial Committee of the Privy Council in a prize appeal.

Appeal; Judicial Committee.

5. An appeal shall lie to her Majesty in Council from any order or decree of a prize court, as of right in case of a final decree, and in other cases with the leave of the court making the order or decree.

Every appeal shall be made in such manner and form and subject to such regulations (including regulations as to fees, costs, charges, and expenses) as may for the time being be directed by Order in Council, and in the absence of any such Order, or so far as any such Order does not extend, then in such manner and form and subject to such regulations as are

for the time being prescribed or in force respecting maritime causes of appeal.

6. The Judicial Committee of the Privy Council shall have jurisdiction to hear and report on any such appeal, and may therein exercise all such powers as for the time being may appertain to them in respect of appeals from any Court of Admiralty jurisdiction, and all such powers as are under this act vested in the High Court of Admiralty, and all such powers as were wont to be exercised by the commissioners of appeal in prize causes.

7. All processes and documents required for the purposes of any such appeal shall be transmitted to, and shall remain in, the custody of the registrar of her Majesty in prize appeals.

8. In every such appeal the usual inhibition shall be extracted from the registry of her Majesty in prize appeals within three months after the date of the order or decree appealed from, if the appeal be from the High Court of Admiralty, and within six months after that date, if it be from a Vice-Admiralty Prize Court.

The Judicial Committee may, nevertheless, on sufficient cause shewn, allow the inhibition to be extracted, and the appeal to be prosecuted after the expiration of the respective periods aforesaid.

Vice-Admiralty Prize Courts.

9. Every Vice-Admiralty Prize Court shall enforce within its jurisdiction all orders and decrees of the Judicial Committee in prize appeals, and of the High Court of Admiralty in prize causes.

10. Her Majesty in Council may grant to the judge of any Vice-Admiralty Prize Court a salary not exceeding 500*l.* a year, payable out of money provided by Parliament, subject to such regulations as seem meet.

A judge to whom a salary is so granted shall not be entitled to any further emolument, arising from fees or otherwise, in respect of prize business transacted in his court.

An account of all such fees shall be kept by the registrar of the court, and the amount thereof shall be carried to, and form part of, the Consolidated Fund of the United Kingdom.

11. In accordance, as far as circumstances admit, with the principles and regulations laid down in the Superannuation Act, 1859, her Majesty in Council may grant to the judge of any Vice-Admiralty Prize Court an annual or other allowance, to take effect on the termination of his service, and to be payable out of money provided by Parliament.

12. The registrar of every Vice-Admiralty Prize Court shall, on the 1st January and the 1st July in every year, make out a return (in such form as the Lords of the Admiralty from time to time direct) of all cases adjudged in the court since the last half-yearly return, and shall, with all convenient speed, send the same to the registrar of the High Court of Admiralty, who shall keep the same in the registry of that court, and who shall, as soon as conveniently may be, send a copy of the returns of each half-year to the Lords of the Admiralty, who shall lay the same before both Houses of Parliament.

General.

13. The Judicial Committee of the Privy Council, with the judge of the High Court of Admiralty, may from time to time frame General Orders for regulating (subject to the provisions of this act) the procedure and practice of prize courts, and the duties and conduct of the officers thereof, and of the practitioners therein, and for regulating the fees to be taken by the officers of the courts, and the costs, charges, and expenses to be allowed to the practitioners therein.

Any such General Orders shall have full effect, if and when approved by her Majesty in Council, but not sooner or otherwise.

Every Order in Council made under this section shall be laid before both Houses of Parliament.

Every such Order in Council shall be kept exhibited in a conspicuous place in each court to which it relates.

14. It shall not be lawful for any registrar, marshal, or other officer of any prize court, or for the registrar of her Majesty in prize appeals, directly or indirectly to act, or be in any manner concerned, as advocate, proctor, solicitor, or agent, or otherwise, in any prize cause or appeal, on pain of dismission or suspension from office, by order of the court or of the Judicial Committee (as the case may require).

15. It shall not be lawful for any proctor or solicitor, or

person practising as a proctor or solicitor, being employed by a party in a prize cause or appeal, to be employed or concerned, by himself or his partner, or by any other person, directly or indirectly, by or on behalf of any adverse party in that cause or appeal, on pain of exclusion or suspension from practice in prize matters, by order of the court or of the Judicial Committee (as the case may require).

II.—PROCEDURE IN PRIZE CAUSES.

Proceedings by Captors.

16. Every ship taken as prize, and brought into port within the jurisdiction of a prize court, shall forthwith, and without break broken, be delivered up to the marshal of the court.

If there is no such marshal, then the ship shall be in like manner delivered up to the principal officer of customs at the port.

The ship shall remain in the custody of the marshal, or of such officer, subject to the orders of the court.

17. The captors shall, with all practicable speed after the ship is brought into port, bring the ship papers into the registry of the court.

The officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture, and saw the ship papers delivered up or found on board, shall make oath that they are brought in as they were taken, without fraud, addition, subduction, or alteration, or else shall account on oath to the satisfaction of the court for the absence or altered condition of the ship papers or any of them.

Where no ship papers are delivered up or found on board the captured ship, the officer in command, or one of the chief officers of the capturing ship, or some other person who was present at the capture, shall make oath to that effect.

18. As soon as the affidavit as to ship papers is filed, a monition shall issue, returnable within twenty days from the service thereof, citing all persons in general to shew cause why the captured ship should not be condemned.

19. The captors shall, with all practicable speed after the captured ship is brought into port, bring three or four of the principal persons belonging to the captured ship before the judge of the court or some person authorised in this behalf, by whom they shall be examined on oath on the standing interrogatories.

The preparatory examinations on the standing interrogatories shall, if possible, be concluded within five days from the commencement thereof.

20. After the return of the monition, the court shall, on production of the preparatory examinations and ship papers, proceed with all convenient speed either to condemn or to release the captured ship.

21. Where, on production of the preparatory examinations and ship papers, it appears to the court doubtful whether the captured ship is good prize or not, the court may direct further proof to be adduced, either by affidavit or by examination of witnesses, with or without pleadings, or by production of further documents; and on such further proof being adduced, the court shall with all convenient speed proceed to adjudication.

22. The foregoing provisions, as far as they relate to the custody of the ship, and to examination on the standing interrogatories, shall not apply to ships of war taken as prize.

Claim.

23. At any time before final decree made in the cause, any person claiming an interest in the ship, may enter in the registry of the court a claim, verified on oath.

Within five days after entering the claim, the claimant shall give security for costs in the sum of 60*l.*; but the court shall have power to enlarge the time for giving security, or to direct security to be given in a larger sum, if the circumstances appear to require it.

Appraisement.

24. The court may, if it thinks fit, at any time direct that the captured ship be appraised.

Every appraisement shall be made by competent persons sworn to make the same according to the best of their skill and knowledge.

Delivery on Bail.

25. After appraisement, the court may, if it thinks fit, direct that the captured ship be delivered up to the claimant,

on his giving security to the satisfaction of the court to pay to the captors the appraised value thereof in case of condemnation.

Sale.

26. The court may at any time, if it thinks fit, on account of the condition of the captured ship, or on the application of a claimant, order that the captured ship be appraised as aforesaid (if not already appraised), and be sold.

27. On or after condemnation the court may, if it thinks fit, order that the ship be appraised as aforesaid (if not already appraised), and be sold.

28. Every sale shall be made by or under the superintendence of the marshal of the court or of the officer having the custody of the captured ship.

29. The proceeds of any sale, made either before or after condemnation, and after condemnation the appraised value of the captured ship, in case she has been delivered up to a claimant on bail, shall be paid under an order of the court either into the Bank of England to the credit of her Majesty's Paymaster-General, or into the hands of an official accountant (belonging to the commissariat or some other department) appointed for this purpose by the Commissioners of her Majesty's Treasury or by the Lords of the Admiralty, subject in either case to such regulations as may from time to time be made, by Order in Council, as to the custody and disposal of money so paid.

Small armed Ships.

30. The captors may include in one adjudication any number not exceeding six, of armed ships not exceeding 100 tons each, taken within three months next before institution of proceedings.

Goods.

31. The foregoing provisions relating to ships shall extend and apply, mutatis mutandis, to goods taken as prize on board ship; and the court may direct such goods to be unladen, inventoried, and warehoused.

Monition to Captors to proceed.

32. If the captors fail to institute or to prosecute with effect proceedings for adjudication, a monition shall, on the application of a claimant, issue against the captors, returnable within six days from the service thereof, citing them to appear and proceed to adjudication; and on the return thereof the court shall either forthwith proceed to adjudication or direct further proof to be adduced as aforesaid, and then proceed to adjudication.

Claim on Appeal.

33. Where any person, not an original party in the cause, intervenes on appeal, he shall enter a claim, verified on oath, and shall give security for costs.

III.—SPECIAL CASES OF CAPTURE.

Land Expeditions.

34. Where, in an expedition of any of her Majesty's naval or naval and military forces against a fortress or possession on land, goods belonging to the state of the enemy or to a public trading company of the enemy exercising powers of government are taken in the fortress or possession, or a ship is taken in waters defended by or belonging to the fortress or possession, a prize court shall have jurisdiction as to the goods or ship so taken, and any goods taken on board the ship, as in case of prize.

Conjoint Capture with Ally.

35. Where any ship or goods is or are taken by any of her Majesty's naval or naval and military forces while acting in conjunction with any forces of any of her Majesty's allies, a prize court shall have jurisdiction as to the same as in case of prize, and shall have power, after condemnation, to apportion the due share of the proceeds to her Majesty's ally, the proportionate amount and the disposition of which share shall be such as may from time to time be agreed between her Majesty and her Majesty's ally.

Joint Capture.

36. Before condemnation, a petition on behalf of asserted joint captors shall not (except by special leave of the court) be admitted, unless and until they give security to the satisfaction of the court to contribute to the actual captors a just proportion of any costs, charges, or expenses or damages that

may be incurred by or awarded against the actual captors on account of the capture and detention of the prize.

After condemnation, such a petition shall not (except by special leave of the court) be admitted unless and until the asserted joint captors pay to the actual captors a just proportion of the costs, charges, and expenses incurred by the actual captors in the case, and give such security as aforesaid, and shew sufficient cause to the court why their petition was not presented before condemnation.

Provided, that nothing in the present section shall extend to the asserted interest of a flag officer claiming to share by virtue of his flag.

Offences against Law of Prize.

37. A prize court, on proof of any offence against the law of nations, or against this act, or any act relating to naval discipline, or against any Order in Council or Royal Proclamation, or of any breach of her Majesty's instructions relating to prize, or of any act of disobedience to the orders of the Lords of the Admiralty, or to the command of a superior officer, committed by the captors in relation to any ship or goods taken as prize, or in relation to any person on board any such ship, may, on condemnation, reserve the prize to her Majesty's disposal, notwithstanding any grant that may have been made by her Majesty in favour of captors.

Pre-emption.

38. Where a ship of a foreign nation passing the seas laden with naval or victualling stores intended to be carried to a port of any enemy of her Majesty, is taken and brought into a port of the United Kingdom, and the purchase for the service of her Majesty of the stores on board the ship appears to the Lords of the Admiralty expedient without the condemnation thereof in a prize court, in that case the Lords of the Admiralty may purchase, on the account or for the service of her Majesty, all or any of the stores on board the ship; and the Commissioners of Customs may permit the stores purchased to be entered and landed within any port.

Capture by Ship other than a Ship of War.

39. Any ship or goods taken as prize by any of the officers and crew of a ship other than a ship of war of her Majesty shall, on condemnation, belong to her Majesty in her office of Admiralty.

IV.—PRIZE SALVAGE.

40. Where any ship or goods belonging to any of her Majesty's subjects, after being taken as prize by the enemy, is or are retaken from the enemy by any of her Majesty's ships of war, the same shall be restored by decree of a prize court to the owner, on his paying as prize salvage one-eighth part of the value of the prize, to be decreed and ascertained by the court, or such sum, not exceeding one-eighth part of the estimated value of the prize, as may be agreed on between the owner and the recaptors, and approved by order of the court: provided, that where the recapture is made under circumstances of special difficulty or danger, the prize court may, if it thinks fit, award to the recaptors as prize salvage a larger part than one-eighth part, but not exceeding in any case one-fourth part of the value of the prize.

Provided also, that where a ship, after being so taken, is set forth or used by any of her Majesty's enemies as a ship of war, this provision for restitution shall not apply, and the ship shall be adjudicated on as in other cases of prize.

41. Where a ship belonging to any of her Majesty's subjects, after being taken as prize by the enemy, is retaken from the enemy by any of her Majesty's ships of war, she may, with the consent of the recaptors, prosecute her voyage, and it shall not be necessary for the recaptors to proceed to adjudication till her return to a port of the United Kingdom.

The master or owner, or his agent, may, with the consent of the recaptors, unload and dispose of the goods on board the ship before adjudication.

In case the ship does not, within six months, return to a port of the United Kingdom, the recaptors may nevertheless institute proceedings against the ship or goods in the High Court of Admiralty, and the court may thereupon award prize salvage as aforesaid to the recaptors, and may enforce payment thereof, either by warrant of arrest against the ship or goods, or by monition and attachment against the owner.

V.—PRIZE BOUNTY.

42. If, in relation to any war, her Majesty is pleased to declare, by Proclamation or Order in Council, her intention to grant prize bounty to the officers and crews of her ships of war, then such of the officers and crew of any of her Majesty's ships of war as are actually present at the taking or destroying of any armed ship of any of her Majesty's enemies shall be entitled to have distributed among them, as prize bounty, a sum calculated at the rate of 5*l.* for each person on board the enemy's ship at the beginning of the engagement.

43. The number of the persons so on board the enemy's ship shall be proved in a prize court, either by the examinations on oath of the survivors of them, or of any three or more of the survivors; or, if there is no survivor, by the papers of the enemy's ship, or by the examinations on oath of three or more of the officers and crew of her Majesty's ship, or by such other evidence as may seem to the court sufficient in the circumstances.

The court shall make a decree declaring the title of the officers and crew of her Majesty's ship to the prize bounty, and stating the amount thereof.

The decree shall be subject to appeal, as other decrees of the court.

44. On production of an official copy of the decree, the Commissioners of her Majesty's Treasury shall, out of money provided by Parliament, pay the amount of prize bounty decreed, in such manner as any Order in Council may from time to time direct.

VI.—MISCELLANEOUS PROVISIONS.

Ransom.

45. Her Majesty in Council may from time to time, in relation to any war, make such orders as may seem expedient, according to circumstances, for prohibiting or allowing, wholly or in certain cases, or subject to any conditions or regulations or otherwise, as may from time to time seem meet, the ransoming or the entering into any contract or agreement for the ransoming of any ship or goods belonging to any of her Majesty's subjects, and taken as prize by any of her Majesty's enemies.

Any contract or agreement entered into, and any bill, bond, or other security given for ransom of any ship or goods, shall be under the exclusive jurisdiction of the High Court of Admiralty as a prize court (subject to appeal to the Judicial Committee of the Privy Council), and if entered into or given in contravention of any such Order in Council shall be deemed to have been entered into or given for an illegal consideration.

If any person ransoms or enters into any contract or agreement for ransoming any ship or goods, in contravention of any such Order in Council, he shall for every such offence be liable to be proceeded against in the High Court of Admiralty at the suit of her Majesty in her office of Admiralty, and on conviction to be fined, in the discretion of the court, any sum not exceeding 500*l.*

Convoy.

46. If the master or other person having the command of any ship of any of her Majesty's subjects, under the convoy of any of her Majesty's ships of war, wilfully disobeys any lawful signal, instruction, or command of the commander of the convoy, or without leave deserts the convoy, he shall be liable to be proceeded against in the High Court of Admiralty at the suit of her Majesty in her office of Admiralty, and upon conviction to be fined, in the discretion of the court, any sum not exceeding 500*l.*, and to suffer imprisonment for such time, not exceeding one year, as the court may adjudge.

Customs Duties and Regulations.

47. All ships and goods taken as prize and brought into a port of the United Kingdom shall be liable to, and be charged with, the same rates and charges and duties of customs as under any act relating to the customs may be chargeable on other ships and goods of the like description; and

All goods brought in as prize which would on the voluntary importation thereof be liable to forfeiture or subject to any restriction under the laws relating to the customs, shall be deemed to be so liable and subject, unless the Commissioners of Customs see fit to authorise the sale or delivery

thereof for home use or exportation, unconditionally or subject to such conditions and regulations as they may direct.

48. Where any ship or goods taken as prize is or are brought into a port of the United Kingdom, the master or other person in charge or command of the ship which has been taken or in which the goods are brought shall, on arrival at such port, bring to at the proper place of discharge, and shall, when required by any officer of customs, deliver an account in writing under his hand concerning such ship and goods, giving such particulars relating thereto as may be in his power, and shall truly answer all questions concerning such ship or goods asked by any such officer, and in default shall forfeit a sum not exceeding 100*l.*, such forfeiture to be enforced as forfeitures for offences against the laws relating to the customs are enforced; and every such ship shall be liable to such searches as other ships are liable to, and the officers of customs may freely go on board such ship and bring to the Queen's warehouse any goods on board the same, subject, nevertheless, to such regulations in respect of ships of war belonging to her Majesty as shall from time to time be issued by the Commissioners of her Majesty's Treasury.

49. Goods taken as prize may be sold either for home consumption or for exportation; and if in the former case the proceeds thereof, after payment of duties of customs, are insufficient to satisfy the just and reasonable claims thereon, the Commissioners of her Majesty's Treasury may remit the whole or such part of the said duties as they see fit.

Perjury.

50. If any person wilfully and corruptly swears, declares, or affirms falsely in any prize cause or appeal, or in any proceeding under this act, or in respect of any matter required by this act to be verified on oath, or suborns any other person to do so, he shall be deemed guilty of perjury, or of subornation of perjury (as the case may be), and shall be liable to be punished accordingly.

Limitation of Actions, &c.

51. Any action or proceeding shall not lie in any part of her Majesty's dominions against any person acting under the authority, or in the execution or intended execution, or in pursuance of, this act for any alleged irregularity or trespass, or other act or thing done or omitted by him under this act, unless notice in writing (specifying the cause of the action or proceeding) is given by the intending plaintiff or prosecutor to the intended defendant one month at least before the commencement of the action or proceeding, nor unless the action or proceeding is commenced within six months next after the act or thing complained of is done or omitted, or, in case of a continuation of damage, within six months next after the doing of such damage has ceased.

In any such action the defendant may plead generally that the act or thing complained of was done or omitted by him when acting under the authority, or in the execution or intended execution, or in pursuance, of this act, and may give all special matter in evidence; and the plaintiff shall not succeed, if tender of sufficient amends is made by the defendant before the commencement of the action; and in case no tender has been made, the defendant may, by leave of the court in which the action is brought, at any time pay into court such sum of money as he thinks fit, whereupon such proceeding and order shall be had and made in and by the court as may be had and made on the payment of money into court in an ordinary action; and if the plaintiff does not succeed in the action, the defendant shall receive such full and reasonable indemnity as to all costs, charges, and expenses incurred in and about the action as may be taxed and allowed by the proper officer, subject to review; and though a verdict is given for the plaintiff in the action, he shall not have costs against the defendant, unless the judge before whom the trial is had certifies his approval of the action.

Any such action or proceeding against any person in her Majesty's naval service, or in the employment of the Lords of the Admiralty, shall not be brought or instituted elsewhere than in the United Kingdom.

Petitions of Right.

52. A petition of right, under the Petitions of Right Act, 1860, may, if the suppliant thinks fit, be intituled in the High Court of Admiralty, in case the subject-matter of the petition, or any material part thereof, arises out of the exercise of any belligerent right on behalf of the Crown, or would

be cognisable in a prize court within her Majesty's dominions, if the same were a matter in dispute between private persons.

Any petition of right under the last-mentioned act, whether intitled in the High Court of Admiralty or not, may be prosecuted in that court, if the Lord Chancellor thinks fit so to direct.

The provisions of this act relative to appeal, and to the framing and approval of General Orders for regulating the procedure and practice of the High Court of Admiralty, shall extend to the case of any such petition of right intitled or directed to be prosecuted in that court; and, subject thereto, all the provisions of the Petitions of Right Act, 1860, shall apply, *mutatis mutandis*, in the case of any such petition of right; and, for the purposes of the present section, the terms "court" and "judge" in that act shall respectively be understood to include and to mean the High Court of Admiralty and the judge thereof; and other terms shall have the respective meanings given to them in that act.

Orders in Council.

53. Her Majesty in Council may from time to time make such Orders in Council as seem meet for the better execution of this act.

54. Every Order in Council under this act shall be published in the London Gazette, and shall be laid before both Houses of Parliament within thirty days after the making thereof, if Parliament is then sitting, and if not, then within thirty days after the next meeting of Parliament.

Savings.

55. Nothing in this act shall—

- (1). give to the officers and crew of any of her Majesty's ships of war any right or claim in or to any ship or goods taken as prize, or the proceeds thereof, it being the intent of this act that such officers and crews shall continue to take only such interest (if any) in the proceeds of prizes as may be from time to time granted to them by the Crown; or
- (2). affect the operation of any existing treaty or convention with any foreign Power; or
- (3). take away or abridge the power of the Crown to enter into any treaty or convention with any foreign Power containing any stipulation that may seem meet concerning any matter to which this act relates; or
- (4). take away, abridge, or control, further or otherwise than as expressly provided by this act, any right, power, or prerogative of her Majesty the Queen in right of her Crown, or in right of her office of Admiralty, or any right or power of the Lord High Admiral of the United Kingdom, or of the Commissioners for executing the Office of Lord High Admiral; or
- (5). take away, abridge, or control, further or otherwise than as expressly provided by this act, the jurisdiction or authority of a prize court to take cognisance of, and judicially proceed upon, any capture, seizure, prize, or reprisal of any ship or goods, and to hear and determine the same, and, according to the course of admiralty and the law of nations, to adjudge and condemn any ship or goods, or any other jurisdiction or authority of, or exercisable by, a prize court.

Commencement.

56. This act shall commence on the commencement of the Naval Agency and Distribution Act, 1864.

CAP. XXVI.

An Act to confirm certain Provisional Orders under the Local Government Act, 1858, relating to the Districts of Southampton, Brighton, Hexham, Oswaldtwistle, Bolton, Ashford, Oswestry, Fareham, West Cowes, and Wilton.
[23rd June, 1864.]

CAP. XXVII.

An Act for regulating the Proving and Sale of Chain Cables and Anchors.
[23rd June, 1864.]

SECT. 1. *Power to corporations, &c. to provide proving establishments for testing chain cables, &c.*

2. *Power to the Board of Trade to grant licenses for proving chain cables and anchors, and may suspend or revoke licenses.*

3. *Board of Trade to appoint inspectors from time to time.*

4. *Licenses to be renewed annually.*

5. *Fees payable on licenses.*

6. *As to remuneration of inspector.*

7. *Tester to test all cables and anchors in proper order, and impress the same with authorised proof mark.*

8. *As to charges for testing and affixing proof mark.*

9. *Power to tester to detain chain cable, &c.*

10. *Tester, on application, to give certificate of test.*

11. *After the 1st July, 1865, it shall be unlawful for makers and dealers to sell unproved chain cables and anchors.*

12. *Persons committing certain offences deemed guilty of a misdemeanour.*

13. *Act not to relieve makers from responsibility.*

14. *Act not to affect Admiralty contracts.*

15. *Term of act.*

Whereas it is essential, for the better security of lives and property afloat in sea-going ships, to make provision for the proper testing of chain cables and anchors: be it therefore enacted &c., as follows:—

SECT. 1. Any corporation, public body, or company may erect and maintain proving establishments, apparatus, and machinery suitable for the testing of chain cables or anchors, and may, notwithstanding the provisions of any previous act limiting the amount of money to be raised by such corporation or public body, or company, raise money for that purpose by way of loan, secured by mortgage of such establishments, apparatus, and machinery, and of the income to be derived therefrom, or of other property of such corporation, public body, or company: provided always as follows:—

- (1). Nothing in this act shall relieve any corporation or public body from the necessity of obtaining, for any borrowing by them under this act, the consent of any authority or person whose consent is by law requisite to any borrowing by them otherwise than under this act.
- (2). Where the consent of any authority or person is not, by law, requisite to any borrowing by any corporation or public body otherwise than under this act, the consent of the Commissioners of her Majesty's Treasury to any borrowing by that corporation or public body under this act is hereby made requisite.
- (3). Nothing in this act shall empower any company to borrow money under this act otherwise than in such manner, and subject to such restrictions, as are prescribed in relation to any borrowing by them for purposes other than the purposes of this act; and if none are prescribed, then in such manner, and under such restrictions, as may be prescribed by resolution of the company, adopted by three-fifths at least of the votes of the shareholders of the company present (personally or by proxy) at a general meeting of the company specially convened for the purpose.
- (4). Any mortgage or charge created or to be created under any power existing at the passing of this act on any property of any such corporation, public body, or company, other than such establishments, apparatus, and machinery as aforesaid, shall have priority over any mortgage created under the powers of this act on the same property.

2. The Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations, hereafter in this act called the Board of Trade, may from time to time grant to any corporation, public body, or company, person or persons erecting any proving establishment, apparatus, and machinery suitable for the testing of chain cables or anchors, license to test chain cables and anchors under this act, and the board may suspend or revoke any license so granted, if the board shall see occasion; and the expression "tester" in this act applies to every corporation, public body, or company, person or persons to whom such license shall be granted, so long as such license continues in force: provided, that such license shall not be granted in any case, unless and until the proving establishment, apparatus, and machinery erected have been in-

spected by an inspector appointed as by this act provided, and have been certified by him as proper and efficient for their purposes.

3. The Board of Trade shall, as soon after the passing of this act as the services of an inspector for the purposes of this act appear to them to be required, and afterwards from time to time as vacancies occur, appoint a fit person to act as inspector of proving establishments, apparatus, and machinery under this act, and may from time to time, at pleasure, remove from his office any person so appointed; and such inspector shall, in the execution of his duties, conform to any regulations from time to time made by the Board of Trade.

4. Any license granted as aforesaid shall be renewable annually, and the same shall not in any case be renewed in any year unless and until the proving establishment, apparatus, and machinery in respect whereof such license was granted, have been inspected by the inspector within that year, and have been certified by him as proper and efficient for their purposes.

5. On the original grant of every such license, and on every annual renewal of every such license, there shall be paid such fee not exceeding 50*l.* as the Board of Trade from time to time appoint; all such fees to be paid to the Board of Trade, and to be by them paid into the receipt of her Majesty's Exchequer, and to be carried to and form part of the Consolidated Fund of the United Kingdom.

6. The inspector shall receive such salary and allowances as may from time to time be directed by the Board of Trade, with the consent of the Commissioners of her Majesty's Treasury, out of money to be provided by Parliament for the purpose.

7. Every tester shall, with all reasonable dispatch, subject every chain cable or anchor that shall be brought to the proving establishment of such tester for the purpose of being proved, and (unless the parties interested may otherwise agree) in the order in which such chain cables and anchors respectively shall be so brought, to the same tensile strain as that to which chain cables and anchors respectively of similar size, weight, or description are or shall be subjected before being received for the use of her Majesty's naval service, and shall stamp every five fathoms in length of every such chain cable, and also every such anchor, with a stamp or die to be provided for that purpose by the tester, and approved by the Board of Trade, denoting that such chain cable or anchor has been "proved," and which shall bear the mark of the tester.

8. Every tester may make such charges for the testing and stamping with proof mark any chain cable or anchor as such tester may think fit, not exceeding the scale of charges authorised by the Board of Trade; and such tester shall affix upon some conspicuous part of the proving establishment a table of the charges so authorised to be taken by such tester; and such table shall be painted upon a board or boards in distinct black letters on a white ground or in white letters upon a black ground, or may be printed in legible characters on paper affixed to such board or boards; and it shall not be lawful for such tester to make any alteration in such table or in any of the charges therein specified until such alteration shall have been approved by the Board of Trade, and the tester shall have caused notice in writing of the intended alteration to be written or printed on paper, and such paper shall have been, for a period of not less than three months, affixed to such table, so that the same shall be clearly legible by all persons who may consult such table.

9. Any tester may detain any chain cable or anchor which shall have been so tested until such charge shall be paid; and if such charge shall not be paid within three months after the testing of such chain cable or anchor, the tester may cause such chain cable or anchor to be sold by auction, and shall out of the purchase money deduct the expenses of such sale, and all other expenses incurred by such tester with respect to such chain cable or anchor, including all lawful charges on the same, and shall pay the surplus thereof (if any), on demand, to the owner of such chain cable or anchor, or to the captain or master of the vessel, or other person on whose application the chain cable or anchor had been tested.

10. When any tester shall have tested and stamped any chain cable or anchor, such tester shall, if requested by the person on whose application the same was tested, within one month after such testing, make out and deliver, free of charge, to such person a certificate of such testing.

11. From and after the 1st July, 1865, it shall not be lawful for any maker of or dealer in chain cables or anchors to sell or contract to sell for the use of any vessel any chain cable whatever or any anchor exceeding in weight 168 lbs., unless such chain cable or anchor shall have been previously tested and duly stamped in accordance with the provisions of this act; and if any person acts in contravention of this provision he shall for every such offence, upon a summary conviction for the same before a justice of the peace, or in Scotland before any sheriff, justice, or magistrate, be liable to a penalty not exceeding 50*l.*

12. If any person shall stamp or assist in stamping any chain cable or anchor with the stamp of any tester, or with a stamp or mark purporting to be the stamp of any tester, without the authority of the tester whose stamp shall have been so used or counterfeited, or with any other stamp or mark, for the purpose or with the intention of passing such chain cable or anchor, or of allowing or assisting in the same being passed as a chain cable or anchor duly tested and stamped under the powers of this act, or if any person, knowing any such chain cable or anchor to have been so wrongfully marked or stamped as aforesaid, shall sell the same, or shall deliver the same to any person to be taken or used as part of the equipment of any vessel, or if any person shall write out and deliver to any person any certificate or document purporting to be a certificate under this act, that any chain cable or anchor has been tested and stamped under the provisions of this act, knowing that the chain cable or anchor referred to in such certificate or document had not been so tested or stamped, every person so offending shall be guilty of a misdemeanour, or in Scotland of an offence, and for every such misdemeanour or offence shall be liable, in the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

13. No maker of, or dealer in, chain cables or anchors, shipowner, or other person, shall by reason of this act, or of anything done thereunder, be relieved from any responsibility in respect of any chain cable or anchor made, sold, or used by him to which, but for this act, he would have been subject.

14. Nothing in this act shall affect any contracts which may be made by the Lords Commissioners of the Admiralty for the supply of any chain cables or anchors to any of her Majesty's dockyards, or for the use of any of her Majesty's ships.

15. This act shall continue in force till the 1st July, 1872, and no longer.

CAP. XXVIII.

An Act to amend the Common-law Procedure (Ireland) Act, 1853, in relation to Jurors and Juries in the County of Cork. [23rd June, 1864.]

Sec. 1. Short title.

2. Power to judge of assize in county of Cork to direct the same panel for the criminal and civil sides, and to direct two sets of jurors to be summoned, one to attend at the beginning of each assizes, and the other to attend the residue thereof. Summons to be made out either for the first or second set.

3. A printed panel to be prepared and kept in the office of the returning officer, and a parchment copy to be annexed to abstract of Nisi Prius.

4. In case of view, judge to appoint trial during the attendance of viewers.

5. Proceedings not to be vitiated by juror acting before or after the time for which attendance was required.

6. Not to alter the powers of courts to make orders for returning juries as heretofore.

7. Special jurors may be summoned for specified days.

8. Sheriff to be reimbursed expenses of giving special notices to jurors.

CAP. XXIX.

An Act to amend the Act of the 3 & 4 Vict. c. 54, for making further Provision for the Confinement and Maintenance of Insane Prisoners. [23rd June, 1864.]

Sec. 1. *Sec. 1 of rectified act repealed.*

2. *Prisoners becoming insane, power to two justices to inquire, with medical aid, respecting such insanity. If certified by justices and such medical*

aid that prisoner is insane, Secretary of State may grant warrant for removal of prisoner to a lunatic asylum. If Secretary of State has reason to believe prisoner sentenced to death to be insane, he may desire medical aid to inquire into the same. If prisoner afterwards pronounced sane, how to be dealt with.

3. *Prisons placed under directors of convict prisons to be deemed prisons to which visiting justices are appointed, and directors to be deemed the visiting justices.*
4. *Provisions of the 3 & 4 Vict. c. 54, not hereby repealed, and of the 23 & 24 Vict. c. 75, to apply to this act.*
5. *The charge and maintenance of insane prisoners to be borne by the common fund of the union.*
6. *So much of sect. 5 of the 3 & 4 Vict. c. 54, as enables overseers to appeal, repealed.*
7. *Extent of act.*

Whereas it is expedient to amend an act passed in the 3 & 4 Vict. c. 54, intituled "An Act for making further Provision for the Confinement and Maintenance of Insane Prisoners:" be it enacted &c., as follows:—

Sect. 1. The 1st section of the said act of the 3 & 4 Vict. c. 54, is hereby repealed.

2. If any person while imprisoned in any prison or other place of confinement under any sentence of transportation, penal servitude, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order by any justice or justices of the peace, or under any other than civil process, shall appear to be insane, it shall be lawful, if such person is confined in a prison to which visiting justices are appointed, for two or more of the visiting justices of such prison, or if such person is in any other place of confinement, for two or more justices of the peace of the county, city, borough, or place in which such place of confinement is situate, and such visiting or other justices are hereby required to call to their assistance two physicians or surgeons, or one physician and one surgeon, duly registered as such respectively under the provisions of an act passed in the 21 & 22 Vict. c. 90, and to be selected by them for that purpose, and to inquire, with their aid, as to the insanity of such person; and if it shall be duly certified by such justices, or any two of them, and such physicians or surgeons, or such physician and surgeon, that such person is insane, one of her Majesty's Principal Secretaries of State may, upon receipt of such certificate, if he shall think fit, direct, by warrant under his hand, that such person shall be removed to such lunatic asylum, or other proper receptacle for insane persons, as the said Secretary of State may judge proper and appoint; and if at any time it shall be made to appear to one of her Majesty's Principal Secretaries of State, that there is good reason to believe that any prisoner in confinement under sentence of death is then insane, either by means of a certificate in writing to that effect in the form given in Schedule (A.), transmitted to him by two or more of the visiting justices of the prison in which such prisoner under sentence of death is confined, or by any other means whatsoever, such Secretary of State shall appoint two or more physicians or surgeons, duly registered as aforesaid, to inquire as to the insanity of such prisoner; and if on such inquiry the prisoner shall be found to be then insane, the fact shall be certified in writing by such persons to the said Secretary of State, and on the receipt of such certificate the said Secretary of State shall direct, by warrant under his hand, that such prisoner shall be removed to such lunatic asylum, or other proper receptacle for insane prisoners as aforesaid; and every person so removed under this act, or already removed and in custody under any former act relating to insane prisoners not under civil process, shall remain in confinement in such asylum, or other proper receptacle as aforesaid, or in any other lunatic asylum, or other proper receptacle to which such person may be removed by any like warrant which the Secretary of State is hereby empowered to issue, if he shall think fit, until it shall be duly certified to the said Secretary of State by two physicians or surgeons, or one physician and one surgeon, duly registered as aforesaid, that such person is sane, and upon the receipt of such last-mentioned certificate the said Se-

cretary of State is hereby authorised to issue a warrant under his hand directing, if the period of imprisonment or custody of such person shall have expired, that he or she shall be discharged, or if such person shall still remain subject to be continued in custody, that he or she shall be removed to any prison or other place of confinement in which he or she may be lawfully confined, to undergo his sentence of death or other sentence, or, if not under sentence, to be dealt with according to law as if no such warrant for his removal to a lunatic asylum had been issued: provided, that nothing in this act contained shall be construed to repeal the 38th section of the 16 & 17 Vict. c. 96, or any part thereof.

3. All prisons which now are or may hereafter be placed under the government of the directors of convict prisons, by virtue of the 13 & 14 Vict. c. 39, or of any other act now in force or which may hereafter be passed, shall for the purposes of this act be deemed to be prisons to which visiting justices are appointed, and the said directors shall be deemed the visiting justices thereof, and the duties and powers heretofore imposed upon and given to any two or more of such visiting justices shall and may be performed and exercised by any one or more of such directors.

4. All the provisions of the first-mentioned act which are not hereby repealed, and all the provisions of an act passed in the session of the 23 & 24 Vict., intituled "An Act to make better Provision for the Custody and Care of Criminal Lunatics," shall apply to lunatics removed under this act in all respects as if they had been removed under the 1st section of the first-mentioned act, and as if the asylum to which they were removed under this act were any asylum for criminal lunatics to which the provisions of the said 23 & 24 Vict. were applicable.

5. Where any order shall have been or shall hereafter be made upon the guardians of any union formed under the provisions of the 4 & 5 Will. 4, c. 76, for the payment of money under sect. 2 of the said first-mentioned act, the amount which shall be paid under such order shall be charged by the guardians upon the common fund of the union, and not to the account of any parish therein; and the power given to the justices to order the seizure and sale of the goods and chattels, or the receipt of the rents of the lands or tenements, of any insane person therein referred to, shall cease as regards the overseers, but shall apply to the guardians of the union who shall have incurred any expenses under any such order of justices as aforesaid.

6. So much of sect. 5 of the said first-mentioned act as enables the overseers of any parish in a union to appeal against an order of justices adjudicating as to the settlement of any insane person is hereby repealed.

7. This act shall extend to England and Wales only.

SCHEDULE (A.)

We, —, being visiting justices of —, hereby certify under our hands that we believe —, a prisoner in the said prison of —, under sentence of death, to be now insane.

CAP. XXX.

An Act to provide for the Alteration of the Circuits of the Court of Justiciary in Scotland, and for holding additional Circuit Courts. [23rd June, 1864.]

Sect. 1. Power to her Majesty in Council to alter circuits of Court of Justiciary in Scotland.

2. Orders in Council to be published, and date of taking effect.

3. Power to Court of Justiciary to make orders and regulations.

CAP. XXXI.

An Act to settle an Annuity on Mary Louisa, Countess of Elgin and Kincardine, in consideration of the distinguished Services performed by the late James, Earl of Elgin and Kincardine. [30th June, 1864.]

CAP. XXXII.

An Act to enable certain Banking Copartnerships which shall discontinue the Issue of their own Bank Notes to sue and be sued by their Public Officer. [30th June, 1864.]

The preamble recites the 7 Geo. 4, c. 48, and the 7 & 8 Vict. c. 32, ss. 24, 12.

Sect. 1. From and after the passing of this act, every banking copartnership registered and carrying on business under the first-recited act, and entitled to issue their own bank notes under the secondly recited act, which shall discontinue the issue of such bank notes, and shall afterwards commence and carry on the trade or business of bankers in London, or within sixty-five miles from London, in such manner as they will then by law be authorised to do, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such copartnership, as the nominal plaintiff, petitioner, or defendant, on behalf of such copartnership; and all judgments, decrees, and orders made and obtained in any such suit may be enforced in like manner as is provided by the first-recited act with respect to copartnerships carrying on business under the provisions of that act; provided that nothing in this act contained shall empower any copartnership to carry on the trade or business of bankers in London, or within sixty-five miles therefrom, in any case where by the existing law they are not authorised so to do.

CAP. XXXIII.

An Act to facilitate the Commutation and Sale of certain Vicarage Tithes in Scotland. [30th June, 1864.]

CAP. XXXIV.

An Act for amending the Law relating to Seats in the House of Commons of Persons holding certain Public Offices. [30th June, 1864.]

- Sect. 1. *Provision in case of person accepting office of Under Secretary when four Under Secretaries are sitting in the House of Commons.*
 2. *Provision in case of more Secretaries or Under Secretaries of State being chosen at a general election than are capable of sitting.*
 3. *Provision in case of other offices.*
 4. *Provision as to members elected previously to passing of this act.*

The preamble recites the 21 & 22 Vict. c. 106, s. 4.

Sect. 1. If at any time when four of the Under Secretaries for the time being to her Majesty's Principal Secretaries of State are members of the House of Commons, any other person, being a member of that House, accepts the office of Under Secretary of State to any of the said Principal Secretaries, the election of such person shall be, and the same is, hereby declared to be void, and a writ shall be issued for a new election.

A member whose election is so declared to be void (and also any person who, not being a member, holds the office of Principal Secretary of State, or Under Secretary to one of her Majesty's Principal Secretaries of State) shall be incapable of being elected or sitting as a member of the House of Commons during such time as he holds such office, and four other Principal Secretaries or Under Secretaries respectively, as the case may be, are members of the House of Commons, but not for any further or longer period.

2. If at any general election there are returned as members to serve in Parliament a greater number of persons holding the office of Principal Secretary of State, or the office of Under Secretary of State, than are permitted by act of Parliament to sit and vote in the House of Commons, the election of such persons shall not be invalidated by reason of such excess; but no one of such persons shall be capable of sitting or voting in the House of Commons until the number of persons returned as members, and holding the same office as himself, is reduced by death, resignation, or otherwise, to the number permitted by law to sit in the House of Commons.

If any person sits or votes in the House of Commons in contravention of this section, he shall be liable to a penalty not exceeding 500*l.* for each day during which he so sits or votes.

3. In all cases in which by any act now in force, or to be hereafter passed, any limit is or shall be imposed upon the number of persons holding any other office who may at the same time sit or vote as members of the House of Commons, the rules established by this act with reference to persons holding the office of Under Secretary of State shall be applied in the same manner as if such other office had been ex-

pressly mentioned in this act, unless special provision shall be made to the contrary.

4. No election of any member of the House of Commons elected previously to the passing of this act, shall be deemed to have become void by reason only of any excess which may have occurred, previously to the passing of this act, in the number of members of the said House holding the same office for the time being beyond the number limited by law.

CAP. XXXV.

An Act for more effectually regulating the Sale of Beer in Ireland. [30th June, 1864.]

- Sect. 1. Short title.
 2. Commencement of act.
 3. Excise officers in Ireland not to grant licenses or renewal of licenses without producing certificate of justices.
 4. Persons applying for certificate to give notice to police officers.
 5. Police officers may object to the issue of certificate.
 6. Prohibitions, &c. now in force in Ireland with respect to houses, which houses may be kept open, to extend to persons licensed, &c. Rights, &c. of justices to extend to this act.
 7. Penalty for selling beer for consumption on the premises without a license.
 8. Penalty for tipping on premises not licensed for consumption on such premises.
 9. Justices may require production of licenses upon the hearing of any complaint.
 10. Power to justices to mitigate penalty annexed by this act to offences.
 11. Wholesale dealers in beer who shall keep open their premises for the sale of beer between seven o'clock in the evening and seven o'clock in the morning to be subject to police supervision.
 12. Proceedings for the recovery of penalties, &c.
 13. Power to appeal to quarter sessions as to the granting or refusing certificate. Where grant of a certificate shall be reversed, license to be annulled.
 14. Parties herein named not required to produce certificate before obtaining grant, &c. of license.
 15. Definition of "retail."

CAP. XXXVI.

An Act to amend the Law relative to the Payment of the Shares of Prize and other Money belonging to deceased Officers and Soldiers of Her Majesty's Land Forces. [30th June, 1864.]

- Sect. 1. Short title.
 2. Interpretation of "prize money."
 3. Sect. 25 of recited act repealed, and new provision hereinafter named substituted.
 4. Indemnity to commissioners.
 5. Indemnity for past payments.

CAP. XXXVII.

An Act to amend and extend the Act for the Regulation of Chimney Sweepers. [30th June, 1864.]

- Sect. 1. *Short titles.*
 2. *Commencement of act.*
 3. *Interpretation of terms.*
 4. *This act to be construed with principal act.*
 5. *Application of penalties.*
 6. *Restriction on employment of children under ten.*
 7. *Chimney sweepers entering houses to sweep chimneys, &c., not to bring with him persons under sixteen.*
 8. *Penalties for before-named offences.*
 9. *Power to justices to impose imprisonment.*
 10. *Burden of proof of age to lie on chimney sweeper.*
 11. *Abolition of minimum penalty.*

The preamble recites the 3 & 4 Vict. c. 85.

General.

Sect. 1. This act may be cited as "The Chimney Sweepers Regulation Act, 1864;" the principal act may be cited as "The Chimney Sweepers and Chimneys Regulation Act, 1840;" and the principal act and this act may be cited toge-

ther as "The Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864."

2. This act shall commence and take effect on the 1st November, 1864.

3. In this act—

The term "sheriff" includes steward:

The term "chimney sweeper" means a person using the trade or business of a chimney sweeper.

4. This act shall be construed together with the principal act as one act, and for this purpose the expression "this act," when used in the principal act, shall be taken to include the present act.

5. Any pecuniary penalty recovered under this act shall be applied as directed in the principal act.

Protection of Children and young Persons.

6. It shall not be lawful for a chimney sweeper to employ a child under the age of ten years to do or assist in doing any work or thing in or about the trade or business of such chimney sweeper elsewhere than within the house or place of business of such chimney sweeper, or the yard or buildings (if any) connected therewith.

7. It shall not be lawful for a chimney sweeper, on any occasion of his entering a house or building for the purpose of sweeping, cleaning, or coring a chimney or flue therein or belonging thereto, or for extinguishing fire in any such chimney or flue, to cause or knowingly allow a person under the age of sixteen years in his employment or under his control to enter before, with, or after him into any part of such house or building, or to be therein for any part of the time during which such chimney sweeper himself continues therein for any such purpose as aforesaid.

8. If any chimney sweeper acts in contravention of either of the foregoing enactments, he shall for every such offence be liable to a penalty not exceeding 10*l*.

9. Where under sect. 2 of the principal act a chimney sweeper is convicted of the offence of compelling or knowingly allowing a person under the age of twenty-one years to ascend or descend a chimney or enter a flue for any purpose in that section mentioned, the justices or sheriff before whom he is convicted may, in lieu of the imposition of any such pecuniary penalty as is authorised by that section, adjudge the offender to be imprisoned in the common gaol or house of correction for any term not exceeding six months, with or without hard labour.

10. In any prosecution of a chimney sweeper for any offence against the principal act or against this act, where the age of any young person or child comes in question, the proof of the age of such young person or child shall lie on the defendant.

11. Sect. 2 of the principal act shall be read as if the words "or less than 5*l*." were omitted therefrom.

CAP. XXXVIII.

An Act to facilitate the Redemption of Chief Rents of Ireland. [30th June, 1864.]

Sect. 1. *Explanation of certain terms.*

2. *Owner of land and owner of rent may agree for redemption, &c. of such rent.*

3. *Application of price of redemption, whether paid in money or in land.*

4. *In cases of limited interests, contract of redemption to have sanction of judge of Landed Estates Court.*

5. *Judge of Landed Estates Court to examine and certify title.*

6. *Deeds affecting contracts for redemption to be chargeable with ad valorem stamp duty as upon a conveyance on sale.*

7. *Apportioning rent reserved, where part only redeemed.*

8. *Reservations or exceptions may go with the rent.*

9. *If payment to trustees be necessary, trustees to be appointed by a judge of Landed Estates Court.*

10. *Application of purchase money.*

11. *Judges may make general orders for all proceedings in their courts.*

12. *Extent of act.*

Sect. 1. Any lands or tenements held in fee farm, or for lives renewable for ever, or for any term whereof more than

two hundred years shall be unexpired, shall, if subject to any rent during the continuance of such estate, be deemed land, within the provisions of this act; and any person entitled in possession to such lands or tenements, or to the rents and profits thereof, under any will or settlement for any term of years determinable on the dropping of a life or lives, or for any greater estate (not being a term of years less than the term for which such lands or tenements may be held), shall be deemed the owner of such lands or tenements; and any person entitled under any will or settlement to an immediate estate in the said rent, or in the reversion to which the same may be incident, for any term of years determinable on the dropping of a life or lives, or for any greater estate, shall be deemed the owner of such rent; and every estate in land or rent, other than an unincumbered estate in fee, shall be deemed a limited estate, within the provisions of this act; and the words "lands or tenements," in this act, shall extend to any divided or undivided shares thereof respectively; and the word "rent" shall extend to any part or parts thereof; and the words "owner or person" shall extend to two or more persons seized of, or entitled to, divided or undivided shares of, or estates in, the said lands and rents respectively, and shall also include any corporate bodies, aggregate or sole.

2. The owner of any land or tenement subject to any rent may agree with the owner of such rent for the redemption and extinguishment thereof on the following terms; that is to say, the price to be paid for such redemption shall be either a sum of money in gross, or a part of the lands or tenements which were subject to the said rent, or any lands or tenements to which the owner shall be entitled in fee-simple or fee-farm, or which shall be subject to the same limitations as the lands or tenements to be discharged from rent by such agreement.

3. In case the owner of such rent shall have only a limited estate therein, if the price agreed to be paid for the redemption thereof shall be a sum of money in gross, it shall be paid to the trustees appointed by the deed or instrument whereby the estate or interest of such owner of rent shall be limited, or to the trustees to be appointed when necessary by the Landed Estates Court, as hereinafter mentioned, for application in the manner hereinafter mentioned; and if the price shall be land, it shall be conveyed to, and held by, such trustees in lieu of the said rent, subject to the same trusts, limitations, and charges as the rent had previously been subject to.

4. If the owner of the rent have only a limited estate therein, the contract for redemption shall not be concluded without the sanction of one of the judges of the Landed Estates Court, after giving notice to such persons as he shall think proper; and in case such contract shall be sanctioned, such deed or deeds shall be executed by the parties as the said judge shall direct.

5. The judge of the Landed Estates Court shall investigate such title, and if it shall be sufficient, he may cause a certificate of his approbation thereof to be annexed to the contract for redemption; and such certificate shall have the effect of giving to the person taking the land or rent under such contract the same title thereto as if the same had been conveyed to him by one of the judges after a sale thereof in the Landed Estates Court.

6. Every deed executed by the direction of the judge, and every certificate annexed to the contract for redemption, as aforesaid, which respectively shall have the force or operation of a conveyance of any rent-charge under this act, shall be chargeable with ad valorem stamp duty as upon a conveyance on sale; that is to say, where the consideration for such redemption shall be a sum of money in gross the said ad valorem stamp duty shall be chargeable in respect of such sum of money as the purchase or consideration money; and where the consideration for such redemption shall be lands or tenements, then the said deed or certificate shall be chargeable with the ad valorem stamp duty which would be chargeable on a conveyance of such lands or tenements on the sale thereof in consideration of the rent contracted to be redeemed.

7. Where it is intended to redeem under this act a part only of any rent, it shall be lawful for one of the judges of the Landed Estates Court to apportion the rent reserved by the lease or grant as between the part thereof to be redeemed and the land as to which the same is to be extinguished and the remaining part or parts of the said rent and land; and

the judge shall direct notice of any such intended apportionment as aforesaid to be given to such persons and in such manner as he shall think fit, and shall hear such parties as shall apply in relation thereto; and after such apportionment, and after the said part of the said rent shall have been so redeemed, the owner of the remaining part of the said rent so apportioned shall have the like remedies for the recovery thereof against the lands out of which the same shall be payable, and the owners and occupiers thereof respectively, as were subsisting for the entire rent before such apportionment; and all the covenants, conditions, and agreements of every lease or grant, except as to the amount of rent to be paid, shall, as regards the part or parts not redeemed, remain in force, in the same manner as they would have done if such redemption had not taken place: provided always, that the enactment in this section shall be deemed to apply to the redemption of any parts of the same original rent to be redeemed at different times; provided also, that where any such part of the said rent so intended to be redeemed shall have been theretofore apportioned or fixed and determined as between the owners of such lands or tenements liable to payment of the whole rent, and such part or parts shall have been theretofore apportioned as between such owners themselves, such apportionment shall be adopted and acted upon to all intents and purposes as if the same was made under the provisions of this section.

8. Any reservations or exceptions, or any returns, services, or duties, secured by or contained in the instrument by which such rent may have been created or reserved, may (with the sanction and approval of a judge of the Landed Estates Court, but not otherwise) be granted or released together with the rent, if the parties interested therein shall agree thereto, and shall express such agreement in the contract by which such rent shall be redeemed or extinguished.

9. When it shall be necessary to pay the purchase money of any rent to trustees for application under this act, if such trustees shall not already exist, or have been created by deed or will, or other instrument, trustees shall be appointed by a judge of the Landed Estates Court, and all such trustees shall apply the same on the same uses and trusts, and hold the same subject to the same charges and limitations, as the rent which had been redeemed; and until a legal application of such purchase money can be made the trustees shall invest the same in the public funds, and shall pay the annual dividends thereof to such persons as would be entitled to the said rent if it had not been redeemed or extinguished.

10. All moneys to be received on any sale effected under the authority of this act may be applied under the directions of a judge of the Landed Estates Court to some one or more of the following purposes; namely, the purchase or redemption of quit or crown rent, or the discharge or redemption of any debt or incumbrance affecting the rent in respect of which such purchase money shall have been paid, or affecting any other hereditaments subject to the same uses or trusts, or the purchase of other hereditaments to be settled in the same manner as the rent in respect of which the money was paid, or the payment to any person becoming absolutely entitled.

11. The judges of the Landed Estates Court may from time to time make general orders for regulating all proceedings in their courts under this act, and the costs of such proceedings; and such rules, so long as they shall be in force, shall have the same effect as if they were comprised in this act.

12. This act shall only extend to Ireland.

CAP. XXXIX.

An Act to amend the Union Assessment Committee Act, 1862. [14th July, 1864.]

Seet. 1. *Notice of appeal against poor rate to be given to the assessment committee of union.*

2. *Committee may, with consent of guardians, be respondents.*

3. *Provision as to costs of committee on appeals.*

4. *Valuation to be made in writing.*

5. *Notice of assessment to be given to certain companies.*

6. *Justices in certain cases not disqualified for hearing appeals.*

7. *Expenses of overseers incurred with consent of ves-*

try, or allowed by assessment committee, may be charged on poor rates.

8. *Power to guardians, with the order of the Poor-law Board, to borrow money for valuation expenses.*

9. *Clerks of assessment committees to furnish clerks of the peace with totals of valuation lists.*

10. *Power to Poor-law Board to order map or plan to be made.*

11. *Penalty on overseers omitting to make declaration or making false declaration.*

12. *The 25 & 26 Vict. c. 103, incorporated herewith.*

13. *Short title.*

Seet. 1. Before any appeal shall be heard by any special or quarter sessions against a poor rate made for any parish contained in any union to which the Union Assessment Committee Act, 1862, applies, the appellant shall give twenty-one days' notice in writing previous to the special or quarter sessions to which such appeal is to be made of the intention to appeal, and the grounds thereof, to the assessment committee of such union: provided, that after the 1st August next no person shall be empowered to appeal to any sessions against a poor rate made in conformity with the valuation list approved of by such committee, unless he shall have given to such committee notice of objection against the said list, and shall have failed to obtain such relief in the matter as he deems just; and which objection, after notice given at any time in the manner prescribed by the said act with respect to objections, the committee shall hear, with full power to call for and amend such list, although the same has been approved of, and no subsequent list has been transmitted to them, and if they amend the same shall give notice of such amendment to the overseers, who shall thereupon alter their then current rate accordingly.

2. The assessment committee of such union may, with the consent of the guardians of such union, after notice shall have been sent to every guardian, appear as respondents to such appeal, but in the name of the guardians of such union, in like manner, and with the same incidents, and subject to the same liabilities, and entitled to the same remedies and rights, as in the case of persons other than the overseers to whom notice of appeal may be given.

3. The costs which the committee may incur in consequence of becoming respondents to such appeal, or of having received notice thereof, shall, if not recovered from the appellants, as well as any costs the committee may be ordered to pay to the appellants, be paid by the guardians and charged to the common fund of the union, unless the court before whom such appeal is heard shall direct that such costs, or any part thereof, shall be charged to the parish, the rate of which is appealed against.

4. Where a valuer is appointed by the assessment committee he shall make his valuation in writing, shewing the particulars of the several hereditaments comprised therein, and the amounts at which he has valued the same respectively, and shall sign such valuation, which shall be open to inspection in like manner and with the same incidents with respect to the taking of copies or extracts as the minute books of the committee.

5. Within fourteen days after the transmission to the assessment committee of any valuation or supplemental valuation list the committee shall give notice to every railway, telegraph, canal, gas, and water company named in such list as the occupier of any property included therein, and not having any office or place of business in the parish to which such list relates, of the sum or sums set down as the rateable value of the property purporting to be occupied by such company or companies, and such notice may be served by being transmitted through the post to the principal office of the company, or one of their principal offices when there shall be more than one.

6. No justice of the peace shall be disqualified for acting in the determination of any appeal against a poor rate at any quarter or special sessions by reason of such justice being rated, or being liable to be rated, in some other parish in the union than that for which the rate appealed against is made.

7. When the overseers of any parish incur any expense in making out any valuation list or supplemental list, or in revising or valuing any of the rateable hereditaments of such

parish, under the provisions of the Union Assessment Committee Act, 1862, with the consent of the vestry given by express resolution, after due notice, they may charge such expense, so far as the same may be authorised by the vestry, upon the poor rate; and if no vestry meeting be held, or no decision arrived at on the subject, then to the extent which the assessment committee shall allow: provided that, as regards the valuation of the property, no expense shall be so charged upon the poor rate, unless the consent of such committee to the procuring of such valuation by the overseers shall have been given previously to the same being made.

8. If the assessment committee order a valuation, with the consent of the board of guardians, to be made of all the rateable hereditaments of any parish, the guardians of the union may, if they think fit, apply to the Poor-law Board for an order to enable them to borrow the requisite amount to pay the cost of such valuation; and if the said board shall issue their order, the said guardians may borrow the same, and charge the poor rates of the several parishes in the union with the repayment of the same by not more than five equal annual instalments; and where the parish for which the valuation is made shall, by reason of any provision in the said Union Assessment Committee Act or this act, be liable to pay the cost of such valuation, the said guardians shall charge the annual instalments, and the interest payable therewith, to such parish, and may recover the same as and with the usual contributions.

9. The clerk of every assessment committee shall send annually, in the month of December, copies of the totals of the gross estimated rental and rateable value of the property included in the valuation lists of the several parishes within the union, and where such totals have been altered by any supplemental valuation list or lists, then of such totals as altered, to the clerk or respective clerks of the peace of the county or counties within which such parishes respectively may be situate.

10. If there be no map or plan of any parish available for the use, or sufficient for the purposes, of the assessment committee, the committee may, with the consent of the guardians, after notice as aforesaid, and under the authority of an order of the Poor-law Board, appoint a competent person to make a map or plan of such parish, and the cost thereof shall be charged either to the common fund, or to the parish, as may be directed by the Poor-law Board.

11. Any overseer who wilfully omits to make the declaration required to be made by the Union Assessment Committee Act, 1862, or makes the same falsely, knowing the same to be untrue, shall be liable for every such offence to a penalty not exceeding 5*l.*, upon a summary conviction for the same before two justices of the peace.

12. The provisions of the Union Assessment Committee Act, 1862, shall, so far as the same are not contrary hereto, be incorporated herewith, and the terms used herein shall be construed in like manner as in that act.

13. This act may be cited as "The Union Assessment Committee Amendment Act, 1864."

CAP. XL.

An Act for authorising the Relinquishment in favour of the King of the Hellenes of certain Money payable in respect of the Greek Loan. [14th July, 1864.]

CAP. XLI.

An Act for confirming a Scheme of the Charity Commissioners for the Charity called "The Free Grammar School," in the City of Coventry. [14th July, 1864.]

CAP. XLII.

An Act to provide for Superannuation Allowances to Officers of Unions and Parishes. [14th July, 1864.]

Sect. 1. *Power to guardians and trustees, with consent of Poor-law Board, to grant superannuation allowances to officers in certain cases.*

2. *Such allowance not to be assignable.*

3. *Limitation of grants of allowances.*

4. *Notice of grant to be given to guardians.*

5. *Interpretation of words herein used.*

Sect. 1. That the guardians of any union or parish, and the

trustees or overseers of any parish appointed or incorporated under a local act, may, at their discretion, with the consent of the Poor-law Board, grant to any officer whose whole time has been devoted to the service of the union or parish and who shall become incapable of discharging the duties of his office with efficiency, by reason of permanent infirmity of mind or body, or of old age, upon his resigning or otherwise ceasing to hold his office, an annual allowance not exceeding in any case two-thirds of his then salary, whether computed according to a fixed sum or to a poundage, and shall charge such allowance to the same fund as that to which such salary would have been charged if he had continued in his office.

2. This allowance shall be payable to or in trust for such officer only, and shall not be assignable nor chargeable with his debts or other liabilities.

3. No officer shall be entitled to such allowance on the ground of age who shall not have completed the full age of sixty years, and shall not have served as an officer of some union or parish for twenty years at the least.

4. No grant shall be made without one month's previous notice, to be specially given in writing to every guardian of the union or parish and to every member of the board of trustees or overseers (as the case may be), of the proposal to make such grant, and the time when it shall be brought forward.

5. The words herein used shall be interpreted in the manner prescribed by the stat. 4 & 5 Will. 4, c. 76, and the subsequent acts amending or explaining the same.

CAP. XLIII.

An Act to grant additional Facilities for the Purchase of small Government Annuities, and for Assuring Payments of Money on Death. [14th July, 1864.]

Sect. 1. *Deferred annuities may be granted if sum required be paid in smaller instalments.*

2. *Such annuities may be granted to extent of 50*l.**

3. *Portion of sect. 10 of recited act repealed.*

4. *Limit on age of persons insured.*

5. *Limit of sum insured.*

6. *Power to construct fresh tables for annuities and insurances.*

7. *This act not to come in force until tables can be legally acted on.*

8. *Provision in case of default by purchasers after five years payments.*

9. *Purchasers liable to provisions of existing Savings Banks Acts.*

10. *Jurisdiction of county court. Jurisdiction of courts in Scotland and Ireland.*

11. *Assignment of contracts.*

12. *Commissioners not to be affected by notice of trust.*

13. *Commissioners for Reduction of National Debt to regulate instalments.*

14. *Power to Postmaster-General, with consent of Treasury, to authorise his officers to receive moneys.*

15. *Power to commissioners to give authority to trustees of savings banks.*

16. *Power to Postmaster-General, with consent of Treasury, to make regulations for carrying out provisions of this act.*

17. *Accounts of Postmaster-General and commissioners to be submitted to Commissioners for auditing Public Accounts.*

Whereas under the act 16 & 17 Vict. c. 45, deferred annuities of small amounts can only be granted upon the condition that the full amount required to purchase such annuities shall be paid in one sum, or by annual payments during a course of years fixed at the time of purchase: and whereas under the said act contracts for payment of a sum of money on death cannot be entered into except upon the condition that the party contracting for such payment on death shall at the same time purchase a deferred annuity depending upon his or her own life: and whereas it is expedient to amend the said act: be it therefore enacted &c., as follows:—

Sect. 1. Deferred annuities, authorised to be granted by the 2nd section of the said act, may be granted upon the condition, to be fixed at the time of purchase, that the sum required under the said act to purchase such annuity shall

be payable in smaller instalments and at shorter periods than are now fixed by the said act.

2. Annuities authorised to be granted under the 2nd section of the said act may be granted in amounts exceeding the limit of 30*l*. fixed by the said act, but no such annuity shall be granted to any one person to an amount exceeding 50*l*. per annum.

3. So much of the 10th section of the said act as requires that a deferred annuity shall be purchased by any person contracting with the Commissioners for the Reduction of the National Debt for payment of a sum of money on death shall be and the same is hereby repealed.

4. No contract for a payment on death shall be entered into by or on behalf of any person under the age of sixteen or over the age of sixty years.

5. No contracts for payment to be made on the death of any one person under this and the said act shall be for a greater amount in the whole than 100*l*., or of a less amount than 20*l*.

6. Whereas by the 16th section of the said act it is enacted, that the Commissioners of her Majesty's Treasury may from time to time direct the Commissioners for the Reduction of the National Debt to use and adopt such tables as shall from time to time be authorised and approved of by the said Commissioners of the Treasury for the grant of annuities, and for payment of sums of money to be secured at death, under the provisions of the said act: and whereas it is expedient that the fund to be formed by the receipt of sums on account of all such contracts effected under the said act and this act shall be adequate to meet all claims accruing and to accrue thereon, so as to render certain the fulfilment of all engagements to persons contracting for such annuities or payments on death, or for any compositions or sums agreed to be granted upon the lapse of any contract, without entailing any charge in respect thereof, or in respect of costs and expenses on the Consolidated Fund of the United Kingdom: be it enacted, therefore, that the said Commissioners of her Majesty's Treasury shall cause tables to be constructed in accordance with the principles above recited, upon which annuities or payments on death shall be contracted for under the said act and this act, and the said tables shall be framed, first, for such contracts as shall provide for the consideration money in one sum; second, for such contracts as shall provide for the like payments in annual sums; and, third, for such contracts as shall provide for the like payments by more frequent instalments; and such tables, when the Commissioners of her Majesty's Treasury have approved of the same, shall, together with a statement of the rules observed in constructing them, be laid before both Houses of Parliament for thirty days before they shall be acted upon; and if any address shall be presented to her Majesty from either House of Parliament praying that such tables may be revoked and cancelled, such tables shall be revoked and cancelled accordingly; and thereupon the Commissioners of her Majesty's Treasury shall order other tables to be framed for their approval in lieu of the tables so revoked and cancelled. The tables for payments on death shall be calculated, so far as the interest of money is concerned, at the rate of 3*l*. per centum per annum.

7. Until the tables made in pursuance of this act can be legally acted on, this act shall not come into force so far as to enable any grant to be made of an insurance on the life of any person, or any grant to be made of any annuity the consideration money for which is paid by instalments more frequent than annual instalments.

8. In case any person who shall contract under the provisions of the said act and of this act for a payment to be made at death, after having paid the several premiums for a period of not less than five years, shall desire to surrender his policy, or shall make default in the payments stipulated to be made according to the contract, the Commissioners for the Reduction of the National Debt, at the option of the party beneficially interested in the contract, shall pay to such person such sum of money, not being less than one-third of the premiums paid by him, as shall be fixed by the regulations authorised to be framed under the provisions of this act, or shall grant to him such a paid-up policy of insurance, or such an immediate or deferred life annuity, under the tables in force under the authority of the said act or this act, as shall be equivalent in value to the sum which, under the provisions of this act, would be paid to him in money; but it

shall also be lawful for the said commissioners, if they think fit, to enter into contracts for payments to be made at death, on the condition that no portion of the premiums paid are to be returnable; and no premium shall be returned in pursuance of this section in respect of any contract so made.

9. For the purposes of this act and of the said act, every person purchasing an annuity, or having purchased the same under the provisions of the said act, or contracting for the payment of a sum of money on his or her death, shall be considered as a depositor in the savings bank; and all the provisions of the acts now in force relating to savings banks, in as far as the same can or may be applicable, shall apply to the parties having purchased or purchasing such annuities, or contracting for the payment of money on death, and to the rules and regulations to be made for carrying the same into effect: provided always, that nothing in this act or the said act contained shall be held to exempt any person or persons entering into a contract for a payment on death, or any person or persons becoming beneficially interested therein, from probate or any stamp duty payable by law.

10. If payment of any sum of money due on a contract made under this act for payment of money on death shall be refused by the Commissioners for the Reduction of the National Debt, the party beneficially interested therein may, if he think fit, instead of proceeding to arbitration in manner provided by the said Savings Banks Acts, take proceedings against the said Commissioners for the Reduction of the National Debt in the county court of the district in which such contract was entered into, or, with the consent of the said commissioners, in any other county court in the jurisdiction of which such party may be resident, for the recovery of the amount; and any county court in which proceedings under this section may be taken shall have jurisdiction in the matter, and the decision thereupon shall be final and binding on all parties to all intents and purposes, and without any appeal; and for the purposes of this act the contract shall be deemed to have been entered into at the place where the party insured resided at the time at which the contract bears date. For the purpose of arbitration under the said acts relating to savings banks, the said commissioners shall, when necessary, be deemed to be in the place of the trustees of the savings banks. In Scotland the sheriff court, and in Ireland the civil bills court of the chairman of quarter sessions, shall have the same jurisdiction as is given by this section to the county court.

11. Any person who shall contract, under the provisions of this act and of the said act, for a payment to be made at death may, after having duly paid for five years or upwards the premiums thereon, assign his right and interest therein, upon payment of such fee, and on such conditions, as shall be fixed by regulations made under the authority of this act. The assignee of such contract shall take, both at law and in equity, all such right and interest therein, including the right to sue, as was possessed by the assignor, but no other or greater right or interest.

12. The commissioners shall not, except in so far as is provided by the said act, receive or be affected by notice, however given, of any trust affecting any annuity, or any contract for payment on death, made in pursuance of this and the said act.

13. The Commissioners for the Reduction of the National Debt, with the consent of the Commissioners of her Majesty's Treasury, may make regulations for fixing the amounts of the several instalments and premiums, and the periods at which such instalments and premiums shall be paid, in respect of the purchase money payable upon all contracts which shall be made under the authority of this and the said act, but so as not to affect any contract previously made; and no sum in respect of instalments or premiums payable at any one time shall be of less amount than 2*s*.

14. The Postmaster-General, with the consent of the Commissioners of her Majesty's Treasury, may, if he shall think fit, authorise and direct such of his officers as he may select to receive such monies as may become payable upon contracts entered into under this and the said act for investment with the Commissioners for the Reduction of the National Debt, and to pay on behalf of the said commissioners all such moneys as may become due and payable under such contracts.

15. The Commissioners for the Reduction of the National Debt may, in like manner, with the consent of the said Com-

commissioners of her Majesty's Treasury, if they shall think fit, authorise the Trustees of Savings Banks established under the 98 & 27 Vict. c. 87, with consent of such trustees, to receive such moneys as may become payable upon contracts entered into under this act for remittance to the Commissioners for the Reduction of the National Debt, and to pay on behalf of the said commissioners all such moneys as may become due and payable under such contracts, and may make to the said trustees a reasonable allowance for their expenses, in respect of such transactions, out of the moneys so received and paid over by the said trustees to the said commissioners.

16. The Postmaster-General, with the consent of the Commissioners of her Majesty's Treasury, may make all regulations for carrying out the provisions of this act, in so far as his department is concerned; and the Commissioners for the Reduction of the National Debt, with the consent of the said Commissioners of her Majesty's Treasury, may make regulations for carrying out the provisions of this act, so far as the Trustees of Savings Banks are concerned, and also for the execution of contracts on behalf of the said commissioners, by any officer or officers appointed by the said commissioners for that purpose, or appointed by the Postmaster-General with the consent of the said commissioners; and all regulations made by the said Postmaster-General and the said Commissioners for the Reduction of the National Debt respectively, shall be binding to the same extent as if such regulations formed part of this act; and copies of all regulations issued under the authority of this act shall be laid before both Houses of Parliament.

17. The annual accounts of the Postmaster-General and of the Commissioners for the Reduction of the National Debt to the 31st December in each year, in respect to all moneys received or invested under the authority of this act, shall annually, prior to the 31st March in each year, be submitted by the said Postmaster-General and by the said commissioners for examination and audit to the Commissioners for auditing Public Accounts.

CAP. XLIV.

An Act to amend the Act relating to Divorce and Matrimonial Causes in England, 20 & 21 Vict. c. 85.

[14th July, 1864.]

Sect. 1. Where under the provisions of sect. 21 of the said act a wife deserted by her husband shall have obtained, or shall hereafter obtain, an order protecting her earnings and property from a police magistrate, or justices in petty sessions, or the Court for Divorce and Matrimonial Causes, as the case may be, the husband and any creditor or other person claiming under him may apply to the court or to the magistrate or justices by whom such order was made for the discharge thereof as by the said act authorised; and in case the said order shall have been made by a police magistrate and the said magistrate shall have died or been removed, or have become incapable of acting, then in every such case the husband or creditor, or such other person as aforesaid, may apply to the magistrate for the time being acting as the successor or in the place of the magistrate who made the order of protection, for the discharge of it, who shall have authority to make an order discharging the same; and an order for discharge of an order for protection may be applied for to and be granted by the court, although the order for protection was not made by the court, and an order for protection made at one petty sessions may be discharged by the justices of any later petty sessions, or by the court.

CAP. XLV.

An Act to further amend the Settled Estates Act of 1856.

[14th July, 1864.]

Sect. 1. *Conditions that leases shall be settled by the court not to be inserted in orders under sect. 10 of recited act.*

2. *Conditions already inserted may be struck out by court.*

3. *Removal of doubts as to construction of sect. 1 of recited act.*

4. *Act to be construed with recited act.*

5. *Extent of act.*

Whereas by the 10th section of the 19 & 20 Vict. [c. 190],

intituled "An Act to facilitate Leases and Sales of Settled Estates," it was enacted, that when the Court of Chancery should deem it expedient that any general powers of leasing any settled estates, conformably to the said act, should be vested in trustees, it might, by order, vest any such power accordingly either in the existing trustees of the settlement or in any other persons, and that in every such case the court, if it should think fit, might impose any conditions as to consents or otherwise on the exercise of such power: and whereas, in order to protect the interests of persons interested in the settled estates affected by such powers, the practice of the said court has been to require that leases granted in pursuance of a power vested in any trustees or other persons, under the provisions of the said 10th section of the said act, should be settled by the said court or by a judge thereof, or otherwise should be made conformable with a model lease deposited in the chambers of the judge: and whereas the introduction of such a condition has been found to occasion delay and expense, and so to create great difficulties in carrying into execution the objects of the act, and such conditions may in general be safely omitted, and it is therefore expedient that the said act should be amended as hereinafter mentioned: be it therefore enacted &c., as follows:—

Sect. 1. In orders to be hereafter made under the said 10th section for vesting any powers of leasing in any trustees or other persons, no condition shall be inserted requiring that the leases thereby authorised should be submitted to or be settled by the said court or a judge thereof, or be made conformable with a model lease deposited in the judge's chambers, save only in any case in which the parties applying for the order may desire to have any such condition inserted, or in which it shall appear to the court that there is some special reason rendering the insertion of such a condition necessary or expedient.

2. In all cases of orders already made in pursuance of the said 10th section, in which any such condition as aforesaid has been inserted, it shall be lawful for any party interested to apply to the court to alter and amend such order, by striking out such condition, and the court shall have full power to alter the same accordingly, and the order so altered shall have the same validity as if it had originally been made in its altered state; but nothing herein contained shall make it obligatory on the court to act under this clause in any case in which from the evidence which was before it when the order sought to be altered was made, or from any other evidence, it shall appear to the court that there is any special reason why in the case in question such a condition is necessary or expedient.

3. And whereas doubts are entertained whether in the construction of the 1st section of the said act the court is bound by the state of facts existing at the period of the settlement taking effect, or by the state of facts at the time of an application to the court under the said act, and it is desirable that such doubts should be removed: be it enacted, that the said court, in determining what are settled estates within the said act, shall be governed by the state of facts and by the trusts or limitations of the settlement at the time of the said settlement taking effect.

4. This act shall be construed and dealt with as part of the said former act as amended by the 21 & 22 Vict. c. 77, and all proceedings under this act shall be subject to the same rules and orders, and shall be conducted in the same manner, as proceedings under the said former acts.

5. This act shall extend to Ireland, but not to Scotland.

CAP. XLVI.

An Act to provide for the Investment and Appropriation of all Moneys received by the Commissioners for the Reduction of the National Debt on account of Deferred Life Annuities and Payments to be made on Death.

[14th July, 1864.]

Sect. 1. Investment of moneys received by Commissioners for Reduction of National Debt on account of deferred annuities and payments on death.

2. Annual account of all moneys received and of disposal thereof to be laid before Parliament.

3. Commissioners for Reduction of National Debt to transmit to Treasury every five years a statement of financial result of engagements and liabilities. Provision in case of deficiency or surplus.

4. Treasury to issue out of Consolidated Fund sums necessary to make good deficiency.

CAP. XLVII.

An Act to amend the Penal Servitude Acts.

[25th July, 1864.]

Sect. 1. *Short titles.*

2. *Length of sentences of penal servitude.*
3. *Punishment of offences in convict prisons.*
4. *Forfeiture of license.*
5. *Offences by holders of license.*
6. *Apprehension of holder of license without warrant.*
7. *Summary punishment of offences.*
8. *Where holder of license is summarily convicted, convicting magistrate to forward certificate to Secretary of State or Lord Lieutenant of Ireland.*
9. *Effect of forfeiture or revocation of license.*
10. *Licenses may be granted in form differing from that in Schedule (A.)*

Whereas two acts were passed, the one the 16 & 17 Vict. c. 90, and the other the 20 & 21 Vict. c. 3, having for their object the substitution of other punishments in lieu of transportation: and whereas it is expedient to amend the said acts: be it enacted &c., as follows:—

Sect. 1. This act shall be construed as one with the above-mentioned acts, and the said acts, together with this act, may be cited for all purposes as the Penal Servitude Acts, 1853, 1857, and 1864, and each of the said acts may be cited as the Penal Servitude Act of the year in which it was passed.

Sentences of Penal Servitude.

2. No person shall be sentenced to penal servitude in respect to any offence committed after the passing of this act for a period of less than five years, and where under any act now in force a period of less than five years is the utmost sentence of penal service that can be awarded, a period of five years shall, in respect to any offence committed after the passing of this act, in such act be substituted for the less period; and where under any act now in force a period of either less or more than five years may be awarded as a sentence of penal servitude, the least sentence of penal servitude that can be awarded under that act shall, in respect to any offence committed after the passing of this act, be a period of five years; and where any person shall on indictment be convicted of any crime or offence punishable with penal servitude, after having been previously convicted of felony, or, in Scotland, of any crime (whether such previous conviction shall have taken place upon an indictment, or under the provisions of the act passed in the 18 & 19 Vict. c. 128), the least sentence of penal servitude that can be awarded in such case shall be a period of seven years.

Convict Prisons.

3. One of her Majesty's Principal Secretaries of State in Great Britain, and the Lord Lieutenant or other Chief Governor in Ireland, may, by warrant under his hand and seal, empower any two or more justices of the peace, to be named in such warrant, acting for any county in which a prison for the reception of convicts under sentence of penal servitude is situate, to order, from time to time, the infliction of corporal punishment on any convict confined in such prison, for an offence committed by such convict in such prison, and against the discipline thereof; and any two or more justices of the peace thus empowered shall have the same power of adjudicating on such offences, and of ordering the infliction of such punishment, to be exercised under the same conditions as one of the directors of convict prisons would have, and no greater.

Licenses.

4. A license granted under the said Penal Servitude Acts, or any of them, may be in the form set forth in Schedule (A.) to this act annexed, and may be written, printed, and lithographed. If any holder of a license granted in the form set forth in the said Schedule (A.) is convicted, either by the verdict of the jury, or upon his own confession, or any offence for which he is indicted, his license shall be forthwith forfeited by virtue of such conviction; or if any holder of a license granted under the said Penal Servitude Acts, or any of them, who shall be at large in the United Kingdom, shall, unless prevented by illness or other unavoidable cause, fail to report himself personally, if in Great Britain to the chief police sta-

tion of the borough or police division, and if in Ireland to the constabulary station of the locality, to which he may go within three days after his arrival therein, and being a male subsequently once in each month, at such time and place, in such manner, and to such person as the chief officer of the constabulary force to which such station belongs shall appoint, or shall change his residence from one police district to another without having previously notified the same to the police or constabulary station to which he last reported himself, he shall be deemed guilty of a misdemeanour, and may be summarily convicted thereof, and his license shall be forthwith forfeited by virtue of such conviction, but he shall not be liable to any other punishment by virtue of such conviction.

5. If any holder of a license granted in the form set forth in the said Schedule (A.)—

- (1). Fails to produce his license when required to do so by any judge, justice of the peace, sheriff, sheriff substitute, police or other magistrate before whom he may be brought charged with any offence, or by any constable or officer of the police in whose custody he may be, and also fails to make any reasonable excuse why he does not produce the same; or,

- (2). Breaks any of the other conditions of his license, by an act that is not of itself punishable either upon indictment or upon summary conviction;

He shall be deemed guilty of an offence punishable summarily by imprisonment for any period not exceeding three months, with or without hard labour.

6. Any constable or police officer may, without warrant, take into custody any holder of such a license whom he may reasonably suspect of having committed any offence, or having broken any of the conditions of his license, and may detain him in custody until he can be taken before a justice of the peace or other competent magistrate, and dealt with according to law.

7. In England and Ireland any offence under this act punishable summarily may be prosecuted summarily before two or more justices; as to England, in manner directed by an act passed in the 11 & 12 Vict. c. 43, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or any act amending the same; and as to Ireland, in manner directed by the act passed in the 14 & 15 Vict. c. 93, intituled "An Act to consolidate and amend the Acts regulating the Proceedings of Petty Sessions, and the Duties of Justices of the Peace out of Quarter Sessions in Ireland," or any act amending the same.

In Scotland, any offence under this act punishable summarily may be prosecuted upon summary conviction, at the instance of the procurator fiscal, before any sheriff or sheriff substitute, or before any two justices of the county, or before the magistrates or any police magistrate of the burgh in which the offence is committed.

8. Where any holder of a license granted in the form set forth in the said Schedule (A.) is convicted of an offence punishable summarily under this or any other act, the justices, sheriff, sheriff substitute, or other magistrate convicting the prisoner, shall without delay forward by post a certificate in the form given in Schedule (B.) to this act annexed; if in England or Scotland to one of her Majesty's Principal Secretaries of State, if in Ireland to the Lord Lieutenant or other Chief Governor of Ireland, and thereupon the license of the said holder may be revoked in manner provided by the said Penal Servitude Acts.

9. Where any license granted in the form set forth in the said Schedule (A.) is forfeited by a conviction of any indictable offence, or is revoked in pursuance of a summary conviction under this act or any other act of Parliament, the person whose license is forfeited or revoked shall, after undergoing any other punishment to which he may be sentenced for the offence in consequence of which his license is forfeited or revoked, further undergo a term of penal servitude equal to the portion of his term of penal servitude that remained unexpired at the time of his license being granted, and shall, for the purpose of his undergoing such last-mentioned punishment, be removed from the prison of any county, borough, or place in which he may be confined, to any prison in which convicts under sentence of penal servitude may law-

fully be confined, by warrant under the hand and seal of any justice of the peace of the said county, borough, or place, and shall be liable to be there dealt with in all respects as if such term of penal servitude had formed part of his original sentence.

10. Provided always, that it shall be lawful for her Majesty, or for the Lord Lieutenant or other Chief Governor in Ireland, whenever they shall respectively think fit, to grant from time to time to convicts under sentence of penal servitude, licenses in any other form different from that set forth in Schedule (A.), which they may respectively consider it expedient to adopt, and containing other and different conditions; and such last-mentioned licenses shall be revocable at pleasure by the authority by which they are granted; but no holder of such last-mentioned license shall be deemed guilty of an offence punishable upon summary conviction, merely by reason of the breach of the conditions of the said last-mentioned licenses, or any of them.

SCHEDULES.

SCHEDULE (A.)

Order of License to a Convict made under the Statute.

Whitehall, — day of —, 18—.

Her Majesty is graciously pleased to grant to —, who was convicted of —, at the — for the —, on the —, and was then and there sentenced to be kept in penal servitude for the term of —, and is now confined in the —, her royal license to be at large from the day of his liberation under this order during the remaining portion of his said term of penal servitude, unless the said — shall before the expiration of the said term be convicted of some indictable offence within the United Kingdom, in which case such license will be immediately forfeited by law, or unless it shall please her Majesty sooner to revoke or alter such license.

This license is given subject to the conditions indorsed upon the same, upon the breach of any of which it will be liable to be revoked, whether such breach is followed by a conviction or not.

And her Majesty hereby orders that the said — be set at liberty within thirty days from the date of this order.

Given under my hand and seal.

Conditions.

1. The holder shall preserve his license and produce it when called upon to do so by a magistrate or police officer.
2. He shall abstain from any violation of the law.
3. He shall not habitually associate with notoriously bad characters, such as reputed thieves and prostitutes.
4. He shall not lead an idle and dissolute life, without visible means of obtaining an honest livelihood.

If his license is forfeited or revoked in consequence of a conviction for any offence, he will be liable to undergo a term of penal servitude equal to the portion of his term of — years which remained unexpired when his license was granted, viz. the term of — years.

SCHEDULE (B.)

Form of Certificate of Conviction of Holder of License.

I do hereby certify that A.B., the holder of a license under the Penal Servitude Acts, was on the — day of —, in the year —, duly convicted by —, of the offence of —, and sentenced to —.

C. D.,
Clerk to the said justices.

CAP. XLVIII.

An Act for the Extension of the Factory Acts.

[25th July, 1864.]

Sect. 1. Short title.

2. Application of act.

3. Definition of "Factory Acts."

4. Factory to be well cleansed and ventilated.

5. Special rules for regulation of workmen in factories.

6. The Factory Acts, as set out in sect. 3, incorporated with this act, and to apply to manufactures, &c., in first schedule.

7. Recovery and application of penalties.

Preliminary.

Sect. 1. This act may be cited for all purposes as the "Factory Acts Extension Act, 1864."

2. This act shall apply only to the several manufactures and employments mentioned in the said first schedule.

3. The Factory Acts shall mean such provisions as are now in force of the acts following; that is to say,

An act passed in the 4 Will. 4, c. 103, intituled "An Act to regulate the Labour of Children and Young Persons in the Mills and Factories of the United Kingdom."

An act passed in the 7 Vict. c. 15, intituled "An Act to amend the Laws relating to Labour in Factories."

An act passed in the 14 Vict. c. 54, intituled "An Act to amend the Acts relating to Labour in Factories."

An act passed in the 17 Vict., c. 104, intituled "An Act further to regulate the Employment of Children in Factories."

An act passed in the 20 Vict. c. 38, intituled "An Act for the further Amendment of the Laws relating to Labour in Factories."

Sanitary Measures.

4. Every factory to which this act applies shall be kept in a cleanly state, and be ventilated in such a manner as to render harmless, so far as is practicable, any gases, dust, or other impurities generated in the process of manufacture that may be injurious to health.

If the occupier of any factory fails to keep the same in conformity with this section, he shall be deemed to be guilty of an offence against this act, and to be subject in respect of such offence to a penalty not exceeding 10*l.* and not less than 5*l.*

The Court having jurisdiction under this act may, in addition to or instead of inflicting any penalty in respect of an offence, under this section make an order directing that within a certain time to be named in such order certain means are to be adopted by the occupier for the purpose of bringing his factory into conformity with this section; the Court may upon application enlarge any time appointed for the adoption of the means directed by the order, but any non-compliance with the order of the Court shall, after the expiration of the time as originally limited or enlarged by subsequent order, be deemed to be a continuing offence, and to be punishable by a penalty not exceeding 1*l.* for every day that such non-compliance continues.

Special Rules.

5. In order to prevent the requirements of this act as to cleanliness and ventilation in a factory being infringed to the detriment of the occupier by the wilful misconduct or wilful negligence of the workmen employed therein, it shall be lawful for the occupier of any factory to make special rules for compelling the observance amongst his workmen of the conditions necessary to insure the required degree of cleanliness and ventilation, and to annex to any breach of such rules a penalty not exceeding 1*l.*

The special rules made in pursuance of this section shall not be of any validity until they have been approved by one of her Majesty's Principal Secretaries of State.

Printed copies of the special rules in force in any factory shall be hung up in a legible condition in two or more conspicuous places in the factory, and a printed copy shall be supplied to any person employed in the factory who may apply for a copy.

A printed copy of the special rules for the time being in force in any factory certified under the hand of the inspector for the time being having jurisdiction over such factory shall be evidence of such rules, and of their having been approved by the said Secretary of State, and it shall be the duty of the above-mentioned inspector to certify copies of special rules when required.

Application of Factory Acts.

6. The Factory Acts shall be incorporated with this act, and shall apply to the several manufactures and employments mentioned in the said first schedule, with the qualifications and subject to the additions hereinafter mentioned:

- (1). The term "factory" as used in this act and in the acts incorporated herewith, shall mean in respect of the manufactures and employments to which this act applies the premises in that behalf specified in the second schedule annexed to this act, but all other terms in this act shall have the same meaning as is assigned to them in the Factory Acts:

- (3). During the first six calendar months next ensuing the passing of this act children of not less than eleven years of age may be employed for the same time, and subject to the same conditions, for and subject to which young persons exceeding thirteen years of age may be employed in pursuance of the said Factory Acts:
- (3). During the first thirty calendar months next ensuing the passing of this act children of not less than twelve years of age may be employed for the same time, and subject to the same conditions, for and subject to which young persons exceeding thirteen years of age may be employed in pursuance of the said Factory Acts:
- (4). In the manufacture of lucifer matches no child, young person, or woman shall be allowed to take his or her meals in any part of the factory where any manufacturing process (except that of cutting the wood) is usually carried on; and any child, young person, or woman who is allowed to take his or her meals in any part of the factory in contravention of the said provision shall be deemed to be employed contrary to the provisions of the Factory Acts:
- (5). In the employment of fustian cutting no child shall be allowed to commence work until the attainment of the age of eleven years; and any child who is allowed to commence work in the employment of fustian cutting before the said age of eleven years shall be deemed to be employed contrary to the said Factory Acts:
- (6). During the first eighteen calendar months next ensuing the passing of this act so much of the said Factory Acts as provide that during any time allowed for meals no child, young person, or woman shall be employed or allowed to remain in any room in which any manufacturing process is carried on, and that all the young persons employed in a factory shall have the time for meals at the same period of the day, shall not apply to the employment of paper staining, or to the manufacture of earthenware; subject to this proviso, that, in the case of the manufacture of earthenware, at no time after the passing of this act shall any child, young person, or woman be allowed to take his or her meals, or to remain during any time allowed for meals, in the dipping houses, dippers drying rooms, or china-scouring rooms:
- (7). Whereas by the said act of the 7 & 8 Vict. c. 15, s. 18, it is provided, amongst other things, that all the inside walls, ceilings, or tops of rooms, whether plastered or not, and all the passages and staircases of every factory which shall not have been painted with oil once at least within seven years, shall be limewashed once at least within every successive period of fourteen months, to date from the period when last whitewashed: be it enacted, that, in the case of the manufacture of earthenware, the above-recited provision shall not apply to those parts of the factory which are solely used for the storage of earthenware, and in which no work is carried on except such as is by the custom of the trade incidental to such storage or necessary for keeping the earthenware in a fit state for sale.
7. All penalties under this act, including penalties for breach of a special rule, shall be recoverable and applied in manner in which penalties are recoverable and applicable under the said Factory Acts, and the term "court" as used in this act shall include any justices, sheriff, or other magistrate having jurisdiction in respect of such penalties.

SCHEDULES TO WHICH THE FOREGOING ACT REFERS:—

FIRST SCHEDULE.

Manufactures and Employments to which Act applies.

- The manufacture of earthenware, except bricks and tiles, not being ornamental tiles.
- The manufacture of lucifer matches.
- The manufacture of percussion caps.
- The manufacture of cartridges.
- The employment of paper staining.
- The employment of fustian cutting.

SECOND SCHEDULE.

Definition of the Word "Factory."

In the manufacture of earthenware, except as aforesaid:—
Any place in which persons work for hire in making or assisting in making, finishing or assisting in finishing, earthenware of any description.

In the manufacture of lucifer matches:—

Any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood.

In the manufacture of percussion caps:—

Any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps.

In the manufacture of cartridges:—

Any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges.

In the employment of paper staining:—

Any place in which persons work for hire in printing a pattern in colours upon sheets of paper either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power.

In the employment of fustian cutting:—

Any place in which persons work for hire in fustian cutting.

For the purposes of this act an apprentice shall be deemed to be a person working for hire.

No building or premises used solely for the purpose of a dwelling-house shall be deemed to be a factory or part of a factory within the meaning of this act.

CAP. XLIX.

An Act to indemnify such Persons in the United Kingdom as have omitted to qualify themselves for Offices and Employments, and to extend the Time limited for those Purposes respectively. [25th July, 1864.]

CAP. L.

An Act to amend an Act of the Twenty-fifth Year of the Reign of Her present Majesty, to provide for the Registration and Transfer of Indian Stocks at the Bank of Ireland, and for the mutual Transfer of such Stocks from and to the Banks of England and Ireland respectively. [25th July, 1864.]

Sect. 1. Assignments and transfers of India Stock in the Bank of Ireland valid, although not accepted in writing.

CAP. LI.

An Act to vest the Site of the India Office in Her Majesty for the Service of the Government of India. [25th July, 1864.]

CAP. LII.

An Act to amend the Law relating to the Valuation of Rateable Property in Ireland. [25th July, 1864.]

Sect. 1. Power to boards of guardians to appeal from the revised valuation of any tenement in their union.

2. Notice of such appeal to be given to the occupier of the tenement.

3. Occupiers joined as respondents, and may obtain costs. Guardians not entitled to costs.

4. Guardians not to enter into recognisance. Appeal not to affect a pending rate.

CAP. LIII.

An Act to make Provision for Uniformity of Process in summary Criminal Prosecutions and Prosecutions for Penalties in the Inferior Courts in Scotland. [25th July, 1864.]

CAP. LIV.

An Act for the Union of the Diocesan Courts and Registries in Ireland; for the Regulation of the Mode of Procedure therein, and also in the Provincial Courts of Armagh and Dublin; and for Appeals therefrom. [25th July, 1864.]

- Sect. 1. Short title.
 2. Extent of act.
 3. Commencement of act.
 4. Interpretation of terms.
 5. Rules and orders to be prepared by the Archbishops of Armagh and Dublin, with the concurrence of the Lord Lieutenant in Council.
 6. Power of altering and regulating fees.
 7. Rules, &c. to be laid before Parliament.
 8. Establishment of united courts and registries.
 9. Certain dioceses to be united for ecclesiastical jurisdiction.
 10. As to official signature of archbishops and bishops.
 11. Transference of certain dioceses to province of Dublin.
 12. Union of certain consistorial and diocesan courts and registries as herein named.
 13. As to discharge of duties of rights and powers of vicars-general of dioceses herein named.
 14. As to the appointment of registrars of united dioceses.
 15. Existing registrars shall continue to perform their duties.
 16. Surviving registrars to perform the duties of registrars of united registries.
 17. Upon death, &c. of all the joint registrars, only one registrar for each united diocese to be appointed.
 18. Deputy registrars not to exercise duties after death, &c. of their principal.
 19. Existing patents of vicars-general of Dromore, &c. annulled, except as to existing rights.
 20. Fees to vicars-general in spirituals.
- Mode of Procedure in the Provincial and United Courts.*
21. Suits, &c. to be commenced by filing a petition or statement of accusation in the registry.
 22. Defendants to have the same rights as in the superior courts.
 23. Affidavit by petition that no collusion exists, and that the allegations in the petition are true.

Service of Petition or Notices, &c.

24. Petitions, &c. may be sent to the registry in a registered letter.
25. Any petition or notice may be served by sending the same in a registered letter to the party to be served.
26. Proceedings in default of appearance.

Payment of Costs.

27. Security for costs.
28. Costs to be in the discretion of the court.
29. Frivolous complaints or defences.
30. As to computation of time.

Oaths and Subscriptions.

31. Acts of episcopal jurisdiction not required to be done in court.
32. Oaths, &c. made before a bishop may be witnessed by archdeacon, &c.

Proceedings by Consent.

33. Determination of questions raised by consent.
34. Suits, &c. may be heard and determined by the Archbishop of Armagh in the province of Dublin.
35. As to the grant of faculties.
36. Ecclesiastical instruments to be filed.
37. Witnesses to give their evidence *viva voce*.
38. Notes of evidence to be taken down by the vicar-general, &c.
39. Note upon any decision in court upon a question of law to be signed by the vicar-general.
40. Short-hand writer to report evidence and summing-up of the court.
41. False evidence to be deemed perjury.
42. Attendance of witnesses.
43. Evidence may be taken before a commissioner appointed by a provincial or united court.
44. Judgments to be in writing.
45. Judgment or sentence to be filed in the registry.
46. When judgments need not be delivered in open court.

47. Copies of judgments to be sent to the parties upon the record.

48. Printed copies of the judgment of the provincial courts and final court of appeal to be sent to the archbishops, &c.

49. Citation or notice to extend over Great Britain, Ireland, &c.

50. Process of the diocesan court to be under seal.

51. Mode of enforcing orders, decrees, and judgments.

52. Who may appear as counsel.

53. Proctors may practise as heretofore, and attorneys, &c. to have same rights as proctors.

54. Qualification of a provincial vicar-general.

55. Appointment of a deputy provincial vicar-general.

56. Qualifications of diocesan vicars-general.

57. Appointment of deputy diocesan vicars-general.

58. Tenure of office.

59. Oath of office.

60. Oath to be taken by deputy vicar-general.

61. Removal of vicar-general when he ceases to be a member of the church.

62. Registrars to perform their duties in person.

63. Appointment of deputy in the case of illness or absence.

64. Judges, &c. not to receive gratuities.

65. Remedies against officers for misconduct.

66. Act not to affect powers of archbishops.

67. Visitation not interfered with.

68. Reservation of powers of vicars-general to appoint surrogates.

69. As to suits pending when this act comes into operation.

70. Power to vicar-general whose power is determined to deliver written judgments.

71. Power to courts to enforce decrees, &c.

72. Authority of archbishops and bishops to include every place in exempt jurisdictions, as in the 5 Geo. 4, c. 91.

73. Transmission of records to the united registries.

74. Penalty on stealing or defacing records.

75. Application of fees, &c. Such fees may be recovered before chairman of county quarter sessions.

76. Accounts of courts and registries to be audited.

77. Annual report of business transacted &c. by the court, to be laid before Lord Lieutenant.

78. Appeals from the united courts to the provincial courts.

79. Provincial court may affirm &c. order appealed against.

80. How appeals from a united court shall be made.

81. No appeal from the judgment of a provincial court from interlocutory decrees not having the force of a definitive sentence.

CAP. LV.

An Act for the better Regulation of Street Music within the Metropolitan Police District. [25th July, 1864.]

Sect. 1. *Repeal of recited provision, and substitution of amended provision.*

2. *Treatment of charge brought to police court while shut.*

The preamble recites 2 & 3 Vict. c. 47, s. 57.

Sect. 1. Sect. 57 of the said act is hereby repealed, and in lieu thereof the following provision shall take effect as part of the said act, namely, any householder within the metropolitan police district, personally, or by his servant, or by any police constable, may require any street musician or street singer to depart from the neighbourhood of the house of such householder, on account of the illness, or on account of the interruption of the ordinary occupations or pursuits of any inmate of such house, or for other reasonable or sufficient cause; and every person who shall sound or play upon any musical instrument or shall sing in any thoroughfare or public place near any such house after being so required to depart, shall be liable to a penalty not more than 40s., or, in the discretion of the magistrates before whom he shall be convicted, may be imprisoned for any time not more than three days, and it shall be lawful for any constable belonging to the metropolitan police force to take into custody without warrant any person who shall offend as aforesaid: provided always, he shall be given into custody by the person making the charge: provided also, that the person making a charge for an offence against this act shall accompany the constable who shall take into custody any person offending as aforesaid to the nearest station-house, and there sign the charge sheet kept for such purpose.

2. Whenever any person charged with an offence under this act shall be brought to any station-house during the time when the police court shall be shut, it shall be lawful for the constable in charge of the station-house to require the person making the charge to enter into a recognisance, conditioned as is provided by the act passed in the 2 & 3 Viet. c. 47, s. 72; and upon the refusal of such person to do so it shall be lawful for such constable to discharge from custody the person so charged.

CAP. LVI.

An Act for granting to Her Majesty certain Stamp Duties; and to amend the Laws relating to the Inland Revenue. [25th July, 1864.]

- Sect. 1.** *Re-insurances of sea risks may lawfully be made*
On termination of risk and proof of prior insurance duly stamped, allowance to be made for stamp duty on policy of re-insurance.
2. *Bills of exchange payable on demand and indorsed abroad to be deemed foreign bills.*
3. *Stamp duties on letters of attorney for the receipt of dividends or interest of stocks, funds, &c.*
4. *Stamp duties on probates, letters of administration, and inventories to extend to British ships at sea.*
5. *Probates, &c. exempted from stamp duty where the effects do not exceed 100l.*
6. *Stamp duties on certain licenses to be for the future excise duties.*
7. *A license may be granted to a hawker upon the certificate required by law, and may be renewed on the production of a previous license.*
8. *Brewers licenses to expire on the 30th September, in each year.*
9. *Sects. 54 to 65 of the 7 & 8 Viet. c. 52, and so much of sect. 13 of the 3 & 4 Will. 4, c. 68, as relates to brewers in Ireland repealed.*
10. *Extension to Ireland of certain provisions of acts relating to brewers in Great Britain.*
11. *Couch frames not to be altered after entry, unless upon notice to supervisor.*
12. *Tobacco licenses taken out by keepers of inns in Scotland to expire on the same day as licenses taken out by them for the sale of exciseable liquors.*
13. *Tobacco licenses granted to persons who retail beer not to be consumed on the premises to expire on the 10th October in each year.*
14. *Auctioneers not to deal in or sell exciseable commodities except upon licensed premises.*
15. *Postage stamps may be received in payment of tazes in Scotland and Ireland.*
16. *Persons admitted barristers in England or in Ireland may be admitted in the other part of the United Kingdom on payment of the stamp duty of 10l. only.*
17. *Parts of certain stamp duties to be paid direct to the treasurer of King's Inns, Ireland, instead of into the Exchequer as heretofore.*
18. *Provisions of former acts to apply to this act.*
19. *Taxes in Scotland may be paid by means of post-office orders.*

Sect. 1. Whereas an act was passed in the 19 Geo. 2, c. 37, intituled "An Act to regulate Insurance on Ships belonging to the Subjects of Great Britain, and on Merchandises or Effects laden thereon;" and by sect. 4 of the same act it is prohibited to make re-insurance except in the cases therein mentioned: and whereas it is expedient to remove such restriction: be it enacted, that notwithstanding anything contained in the said act, it shall be lawful to make re-insurance upon any ship or vessel, or upon any goods, merchandises, or other property on board of any ship or vessel, or upon the freight of any ship or vessel, or upon any other interest in or relating to any ship or vessel which may lawfully be insured, and such re-insurances shall be deemed to be the insurance of interests which may lawfully be insured within the meaning of the acts imposing stamp duties of sea insurance: provided always, that if within three calendar months next after the termination of the risk on any policy of re-insurance application shall be made to the Commissioners of

Inland Revenue, and it shall be proved to their satisfaction that any such re-insurance as aforesaid has been made on the same property or interest and risk which shall have been previously insured to the same or some greater amount by one or more lawful and valid policy or policies existing at the time of making such re-insurance, and duly stamped for denoting the full and proper duties chargeable thereon, it shall be lawful for the said commissioners to make allowance for the stamp duty impressed on the policy of re-insurance in like manner as in the case of spoiled stamps on policies of insurance under the act passed in the 54 Geo. 3, c. 183; and the several provisions of the said act, so far as they are applicable or can be applied, shall be observed and put in force with respect to the allowance of the stamps on the said policies of re-insurance.

2. Any bill of exchange payable on demand, which shall be indorsed out of the United Kingdom, or purport to be so indorsed, wheresoever the same may have been drawn, shall, for the purpose of charging the stamp duty thereon, be deemed to be a foreign bill of exchange, but shall be chargeable with the same amount of stamp duty as an inland bill of exchange for the payment of money otherwise than on demand, according to the amount thereby made payable; and the provisions, regulations, and penalties contained in the 5th section of the act passed in the 17 & 18 Viet. c. 88, shall be deemed to apply to any such bill so indorsed or purporting to be indorsed as aforesaid as if the same were a bill drawn out of the United Kingdom.

3. In lieu of the stamp duties now payable for or upon any letter or power of attorney for the receipt of dividends or interest of any of the Government or Parliamentary stocks or funds, or of the stocks or funds of the Secretary of State in Council of India, or of India promissory notes, or registered promissory notes, the interest of which is payable by bills of exchange on the Governments of India, Madras, and Bombay respectively, or of the stocks, funds, or shares of or in any joint-stock company or other company or society whose stocks or funds are divided into shares and transferable, there shall be charged and paid for or upon such letter or power of attorney as aforesaid the following stamp duties; that is to say—

Where such letter or power of attorney shall be for the receipt of one payment only, the duty of 1s.

And where the same shall be for continuous receipt, or for the receipt of more than one payment, the duty of 5s.

4. And whereas certain ad valorem stamp duties are by several statutes in that behalf granted and imposed upon, or in respect of, the following instruments; that is to say—

Probate of a will and letters of administration, with or without a will annexed, to be granted in England or Ireland;

Inventory to be exhibited and recorded in any commissary court in Scotland of the estate and effects of any person deceased:

Be it enacted, that the said stamp duties shall be charged and paid in respect of the value of any ship, or any share of a ship, belonging to any deceased person which shall be registered at any port in the United Kingdom, notwithstanding such ship, at the time of the death of the testator or intestate, may have been at sea or elsewhere out of the United Kingdom; and for the purpose of charging the said duties, such ship shall be deemed to have been at the time aforesaid in the port at which she may be registered.

5. No stamp duty shall be chargeable on any such probate, letters of administration, or inventory as aforesaid in any case where the whole estate and effects of the deceased person dying after the passing of this act (exclusive of what he shall have been possessed of, or entitled to, as a trustee for any other person or persons, and not beneficially), shall be sworn not to exceed, and shall not actually exceed, in value the sum of 100l.

6. Whereas it is expedient that the duties now payable as stamp duties upon the licenses hereinafter mentioned should for the future be and become payable as duties of excise: be it enacted, that on and from and after the 1st July, 1864, the duties now payable by law upon, or in respect of, the licenses to be taken out in the United Kingdom by persons carrying on the trades and businesses hereinafter mentioned, as described and defined by the several statutes relating to such licenses and trades or businesses respectively; that is to say—

Appraisers,
Pawnbrokers,
Dealers in gold and silver plate,
Owners, proprietors, makers, and compounders of, and
persons uttering, vending, or exposing to sale, or keep-
ing ready for sale, any medicine liable to stamp duty,
Hawkers and pedlars,
House agents,
Sellers of playing cards (being makers thereof),
And sellers of playing cards (not being makers thereof),

Shall respectively be denominated, and be deemed to be, duties of excise, and the said licenses respectively shall be granted by such officer or officers of excise, and shall be in such form as the Commissioners of Inland Revenue shall direct in that behalf; and all powers and directions granted to, or to be observed by, any officers of stamps, and now in force, contained in any act relating to the said duties or licenses, or to the said trades and businesses, or any of them, may be executed and enforced, and shall be observed, by any officer of excise; and all such duties and all fines, penalties, and forfeitures imposed by any act or acts of Parliament upon any person who shall carry on any of the said trades or businesses without being duly licensed, or who shall do, or omit to do, any act or thing in any manner contrary to the provisions of any act of Parliament relating to the said licenses, or to the said duties, or any of them, may be collected, sued for, recovered, levied, mitigated, paid, and applied by the same means and methods, and in like manner, and under the same general or special powers, provisions, regulations, and directions as to appeal, and in all other respects, as any other duties of excise, or any fines, penalties, or forfeitures, are directed to be collected, sued for, recovered, levied, mitigated, paid, and applied, under any act relating to the excise revenue, as well as by the means and methods and in the manner directed by the said act or acts relating to the said duties or licenses, or to the said trades or businesses, and in force at the time of the passing of this act.

7. Any license to a hawker, pedlar, and petty chapman in Great Britain may be granted by any authorised officer of excise upon the person applying for it producing the certificate described in the 6th section of the 24 & 25 Vict. c. 21, or in any former act: provided always, that it shall be lawful to grant to any person who shall have taken out a license as a hawker, pedlar, and petty chapman a renewed license upon the production and surrender of the license last previously issued to him as such hawker, pedlar, and petty chapman, and without the production of any further or other certificate, so long as he shall continue to renew his license immediately upon the expiration thereof.

8. All licenses granted to brewers of beer for sale after the 30th September, 1864, shall continue and be in force from the day of the date of such licenses respectively until and upon the 30th September next after the granting thereof, on which last-mentioned day all such licenses shall expire.

9. Whereas it is expedient that the laws relating to brewers of beer for sale should be made uniform throughout the United Kingdom: be it enacted, that sects. 54 to 65 inclusive (relating to brewers of beer in Ireland) of the act passed in the 7 & 8 Geo. 4, c. 52, and so much of sect. 13 of the act passed in the 3 & 4 Will. 4, c. 68, as prohibits any brewer from receiving or holding a license to sell beer, cider, or spirits by retail, to be drunk or consumed on the premises, shall be and the same are hereby repealed, except as to anything done or omitted to be done, or as to any penalty or forfeiture which shall respectively have been incurred, before the passing of this act.

10. Sects. 2 and 3 of the act passed in the 56 Geo. 3, c. 58 (as amended and altered by sect. 20 of the act passed in the 25 Vict. c. 22), and sects. 1, 2, and 3 of the act passed in the 1 & 2 Geo. 4, c. 22, and also sects. 15 and 16 of the act passed in the 1 Will. 4, c. 51, shall extend to and be in force in Ireland, and shall apply to brewers of beer in Ireland, and to all acts, matters, and things done or to be done in Ireland, in like manner as at the time of the passing of this act the said sections of the several acts aforesaid do apply to the like acts, matters, and things, done or to be done in Great Britain.

11. And whereas by an act passed in the 7 & 8 Geo. 4, c. 52, couch frames to be used by maltsters in the making of malt are required to be made and constructed in the manner and form thereby prescribed, and it is fit and proper, in order to prevent fraud or error in the gauging of the corn or grain,

that no alteration should be made in such couch frames without previous notice to the officers of excise: be it enacted, that if any alteration shall be made in the dimensions, size, or capacity of any couch frame in the malthouse of any maltster after entry thereof made by him with the officer of excise without four days' notice in writing having been previously given by such maltsters of the intended alteration to the supervisor of excise of the district in which such malthouse is situate, the maltster shall forfeit the sum of 100*l.*, together with all corn or grain found in the said couch frame.

12. And whereas licenses for the sale of beer, spirits, and wine in inns and public houses licensed under the authority of justices of the peace in Scotland expire on the 15th May in each year, and it would be convenient to the keepers of such inns and public houses if the licenses to deal in and sell tobacco and snuff therein expired on the said day instead of on the 10th October in each year as now provided by law: be it enacted, that all licenses to deal in or sell tobacco or snuff, which shall be granted after the passing of this act to the keepers of such inns or public houses as aforesaid, shall expire on the 15th May next after the granting of the same; and every such last-mentioned license as aforesaid which shall be in force at the time of the passing of this act, and which but for this act would expire on the 10th October next, shall continue in force until the 15th May, 1865, provided the holder of any such license shall on or before the 11th October next pay to the proper collector of excise in respect of the continuance of such license the sum of 3*s.*, the payment of which sum shall be indorsed by such collector on the said license; and for the purpose of ascertaining the proportionate amount of duty to be paid in respect of my license to deal in or sell any tobacco or snuff which shall be granted after the passing of this act to any person intending to keep such inn or public house as aforesaid, and who shall be entitled under the laws of excise to take out such license as a beginner according to the quarter of the year in which such license shall be taken out, the four quarters of the year shall be deemed to expire on the days hereinafter mentioned; that is to say, the first quarter on the 15th August, the second quarter on the 15th November, the third quarter on the 15th February, and the last quarter on the 15th May.

13. And whereas by the 25th section of an act passed in the 26 & 27 Vict. c. 33, it is enacted, that licenses to be taken out for the sale of tobacco or snuff by innkeepers or persons licensed to sell beer to be consumed upon the premises after the 5th July, 1863, should expire on the 10th October next after the granting thereof, and it is expedient that such licenses when granted to persons licensed to sell beer by retail not to be consumed on the premises, under an act passed in the 1 Will. 4, c. 64, and other acts for the amendment thereof, should also expire on the said last-mentioned day: be it enacted, that all licenses for the sale of tobacco or snuff, which after the passing of this act shall be granted to persons licensed to sell beer as last aforesaid, shall expire on the 10th October next after the granting of the same.

14. And whereas by the 6th section of the act passed in the 8 Vict. c. 15, it is enacted, that any auctioneer, having in force a license on which the duty under the provisions of that act has been paid, may sell by auction any property, goods, or commodities mentioned in the said section without taking out any other license in such respect: and whereas persons holding licenses as auctioneers do under colour thereof carry on the business of dealers and traders in commodities for the dealing in and selling of which excise licenses are by law required to be taken out, and it is expedient to alter and amend the law in this respect: be it enacted, that no license taken out by any person to exercise or carry on the trade or business of an auctioneer shall authorise such person to deal in or sell, either on his own account or for his own benefit, or on account of or for the benefit of any other person, any commodities for the dealing in or selling of which an excise license is required, except upon premises in respect of which the owner of such commodities shall have taken out and shall have in force at the time of the sale thereof the proper excise license for the sale of such commodities; provided that any such licensed auctioneer may sell by auction, by sample, in any town or place, any such commodities as aforesaid, if the owner thereof shall be duly licensed for the sale of such commodities in the same town or place; and provided also, that the Commissioners of Inland Revenue may in their discretion authorise any licensed auctioneer to sell any such com-

modities by auction where they shall be satisfied that the said commodities are the property of a private person, and are not sold for profit or by way of trade; and if any person shall sell by auction any such commodities contrary to or otherwise than as allowed by this section, he shall incur the penalties imposed upon persons dealing in or selling such commodities without the excise licenses required by law.

15. It shall be lawful for the Lords Commissioners of her Majesty's Treasury, if they shall see fit, and under such regulations, conditions, and limitations as they shall think proper, to authorise and direct the Commissioners of Inland Revenue and their officers to receive postage stamps as and for payment of the respective taxes of land tax and assessed taxes and income tax, or any of them, which may become due or payable in Scotland or Ireland; and, under such regulations as aforesaid, such postage stamps shall be delivered over to the Postmaster-General or his officers, and the amount or value thereof be paid out of the revenue of the post-office to the inland revenue, and accounted for as moneys arising from the said taxes.

16. Whereas the stamp duty chargeable on the admission of any person to the degree of barrister-at-law in either of the Inns of Court in England is 50*l.*, and the stamp duty chargeable on the admission of any person to the like degree in the Inns of Court in Ireland is also 50*l.*, but of the latter sum 10*l.* is payable to the treasurer of the society of King's Inns, to be applied as the society may direct: be it enacted, that where any person duly admitted to the said degree in Ireland, and having paid the full stamp duty chargeable thereon, shall be admitted as aforesaid in England, his latter admission shall be chargeable with the stamp duty of 10*l.* only for the use of her Majesty's revenue; and where any person duly admitted to the said degree in England, and having paid the full stamp duty chargeable thereon, shall be admitted as aforesaid in Ireland, his latter admission shall be chargeable with the stamp duty of 10*l.* only for the use of the said society of King's Inns, to be paid over to the treasurer of the said society, and applied as directed or authorised by the statutes in that behalf.

17. Whereas by an act passed in the 5 & 6 Vict. c. 82, and the several acts continuing and confirming the same, the Receiver-General of stamp duties is required to pay parts of certain stamp duties in the said first-recited act mentioned at the receipt of her Majesty's Exchequer in Ireland, and the Commissioners of her Majesty's Treasury for the time being are directed to pay the same to the treasurer of the society of King's Inns: be it enacted, that the said Receiver-General shall pay the same to the said treasurer instead of to the receipt of her Majesty's Exchequer in Ireland as directed by the said acts, to be applied as in the said acts mentioned.

18. All the powers, provisions, clauses, regulations, forfeitures, pains, and penalties contained in or imposed by any act or acts relating to any duties of the same kind or description as the several rates or duties granted by this act respectively, and in force at the time of the passing of this act, and not hereby expressly repealed, shall respectively be in full force and effect with respect to the said rates and duties by this act granted respectively, so far as the same are or shall be applicable, in all cases not hereby expressly provided for, and shall be observed, applied, enforced, and put in execution for and in the raising, levying, collecting, and securing of the said last-mentioned rates and duties, and otherwise in relation thereto, so far as the same shall not be superseded by and shall be consistent with the express provisions of this act, as fully and effectually to all intents and purposes as if the same had been herein repeated and specially enacted, *mutatis mutandis*, with reference to the rates and duties by this act granted respectively.

19. When any person liable to the payment of any of the duties of land tax, assessed taxes, or income tax in Scotland shall have received the accustomed notice thereof, it shall be lawful for him, within twenty-one days after receiving such notice, to produce the same at any money-order office of the General Post Office in Scotland, and pay to the postmaster there the sum payable according to such notice, and thereupon the said postmaster shall deliver to him a post-office order payable at the General Post Office in London to the Receiver-General of Inland Revenue for the said sum, less the commission for such order, which order such person shall forthwith transmit to the collector at the office for receipt in a letter prepaid, by being duly stamped with the proper

postage stamp or stamps, specifying the particulars of the payment in such form as shall be provided by the Commissioners of Inland Revenue for that purpose, and deliver to the said person along with the said order; and upon the receipt of the said order and letter, with the particulars and in the form aforesaid, the collector shall credit the person named in the said letter with the amount specified in the said order, and with the said commission, in like manner as if the same had been paid to the collector in cash.

CAP. LVII.

An Act to make Provision respecting the Acquisition of Lands required by the Admiralty for the Public Service, and respecting the Use and Disposition thereof, and the Execution of Works thereon. [25th July, 1864.]

- Sect. 1. Short title.
2. Interpretation of terms.
3. Power to Admiralty to take lands by agreement.
4. Incorporation of Lands Clauses Acts, except provisions giving compulsory powers, &c.
5. Incorporation of Lands Clauses Acts with special acts.
6. Power to Admiralty to withdraw notice for purchase within limited time.
7. Incorporation of Railways Clauses Acts as to correction of errors, &c. in books of reference, &c.
8. Limit of time for compulsory purchases.
9. Lands to vest in Lords of Admiralty, &c. for the time being.
10. Powers of management, &c. of lands.
11. Actions and suits by and against Admiralty as to lands.
12. As to recovery of possession of land in England from tenants.
13. As to recovery of possession of land in Ireland from tenants.
14. Exception from incorporation of provisions as to sale of superfluous lands.
15. Power to Admiralty to sell lands not required for public service.
16. Rights of pre-emption preserved.
17. Payment of purchase money.
18. Lands vested indefeasibly in purchaser.
19. Compensation by Admiralty for prior interests (if any) afterwards established.
20. Incorporation of Railways Clauses Acts as to certain works, roads, &c.
21. Exception from incorporation of requirements as to bonds.
22. Provision for purchase money, &c.
23. Service of notices, &c.
24. Application of pecuniary penalties, &c.
25. Protection to Admiralty against penalties, &c.
26. Extension of provisions as to actions and suits.
27. Nothing to affect rights of Admiralty.

CAP. LVIII.

An Act for confirming a Provisional Order concerning Pilotage made by the Board of Trade under the Merchant Shipping Act Amendment Act, 1862, relating to Hartlepool. [25th July, 1864.]

CAP. LIX.

An Act to continue the Deputy Commissioners in Lunacy in Scotland, and to make further Provision for the Salaries of the Deputy Commissioners, Secretary, and Clerk of the General Board of Lunacy in Scotland. [25th July, 1864.]

CAP. LX.

An Act to enable Her Majesty to grant a Lease for Nine hundred and ninety-nine Years of the Building known as the College of Physicians, in Pall-mall East. [25th July, 1864.]

CAP. LXI.

An Act for empowering the Commissioners of the Treasury to guarantee, and the Commissioners for the Reduction of the National Debt to advance, the Sums authorised to be borrowed for the Embankment of the Thames and Im-

improvement of the Metropolis; and for other purposes connected therewith. [25th July, 1864.]

- Sect. 1. Power to Treasury to guarantee money borrowed under acts in schedule.
2. Mode in which guarantee to be given.
3. Power to Treasury to make issues out of Consolidated Fund, if necessary.
4. As to repayments to Consolidated Fund.
5. Deficiency to be repaid out of general rates of metropolis.
6. Provision as to appropriation of improvement fund during the guarantee.
7. Power to Commissioners for Reduction of National Debt, with consent of Treasury, to advance money coming into their hands under the 26 & 27 Vict. c. 87, and the 24 & 25 Vict. c. 14, on security of Thames Embankment, &c. Improvement Fund.
8. Short title.

CAP. LXII.

An Act for amending the Isle of Man Harbours Act, 1863. [25th July, 1864.]

CAP. LXIII.

An Act to suspend the making of Lists and the Ballots for the Militia of the United Kingdom. [25th July, 1864.]

CAP. LXIV.

An Act for further regulating the closing of Public Houses and Refreshment Houses within the Metropolitan Police District, the City of London, certain Corporate Boroughs, and other Places. [25th July, 1864.]

- Sect. 1. *Short title.*
2. *Limits of act.*
3. *Definition of "corporate boroughs."*
4. *Definition of "refreshment houses," &c.*
5. *As to the closing of public houses and refreshment houses.*
6. *Application of act to free vintners.*
7. *Occasional license.*
8. *Definition of "local authority."*
9. *As to adoption of act by corporate borough.*
10. *Not to apply to sales at railway stations between one and four in the morning.*

Sect. 1. This act may be cited for all purposes as the "Public House Closing Act, 1864."

2. This act shall be in force only within the limits of the metropolitan police district, the city of London, and the liberties thereof, and such corporate boroughs and districts of Improvement Commissioners as adopt the same in pursuance of the powers hereinafter given.

3. "Corporate borough" shall mean any place for the time being subject to the act passed in the 5 & 6 Will. 4, c. 76, intitled "An Act to provide for the Regulation of Municipal Corporations in England and Wales;" "District of Improvement Commissioners" shall mean any place within the jurisdiction of a board of Improvement Commissioners as defined for the purposes of the 12th section of the Local Government Act, 1858; and "Board of Improvement Commissioners" shall mean such commissioners as last aforesaid.

4. "Refreshment house" shall in this act have the same meaning as it has in the act passed in the 23 Vict. c. 27, intitled "An Act for granting to her Majesty certain Duties on Wine Licenses and Refreshment Houses, and for regulating the licensing of Refreshment Houses and the granting of Wine Licenses."

"Exciseable liquor" shall mean any spirits, foreign wine, beer, cider, sweets, or made wines, as defined by the acts relating to the excise.

5. Save as hereinafter mentioned, no licensed victualler within the limits of this act shall sell or expose for sale or open or keep open any house, room, garden, or other place for the sale or consumption of exciseable liquors or any article whatsoever between the hours of one and four o'clock in the morning.

No person within the limits of this act shall open or keep open any refreshment house, or sell or expose for sale or consumption in any refreshment house any refreshments or any article whatsoever between the above-mentioned hours.

Any person acting in contravention of this section shall be liable to a penalty not exceeding 5*l.*, to be recovered in a summary manner as provided by the 11 & 12 Vict. c. 43.

Nothing herein contained shall preclude a licensed victualler from selling exciseable liquors to or allowing the same to be consumed by persons lodging in his house, or the keeper of a refreshment house from selling refreshments to or allowing the same to be consumed by persons lodging in his house, within the above-mentioned hours.

Nothing herein contained shall authorise a licensed victualler to sell exciseable liquors on any Sunday, Christmas Day, Good Friday, or day appointed for public fast or thanksgiving, otherwise than during the times at which he is now authorised by law to sell the same, or authorise any other person to sell exciseable liquors, keep open any refreshment house, or sell refreshments otherwise than at the times and upon the conditions prescribed by the acts of Parliament in that behalf made.

6. This act shall apply to a freeman of the company of the master, wardens, and commonalty of vintners of the city of London in the same manner as if he were a licensed victualler.

7. If any licensed victualler or keeper of a refreshment house as aforesaid within the limits of this act, applies to the local authority hereinafter mentioned for a license exempting him from the provisions of this act on any special occasion or occasions, it shall be lawful for the local authority, if in its discretion it thinks fit so to do, to grant to the applicant an occasional license exempting him from the provisions of this act during certain hours and on a special occasion or occasions to be specified in the license; and no licensed victualler or keeper of a refreshment house to whom an occasional license has been granted under this act shall be subject to any penalty for a contravention of this act during the time to which his occasional license extends, but he shall not be exempted by such occasional license from any penalty to which he may be subject under any other act of Parliament.

8. The following persons and bodies of persons shall be deemed to be local authorities capable of granting occasional licenses for the purposes of this act; that is to say—

- (1). In the metropolitan police district, the commissioner of police for the metropolis, subject to the approbation of one of her Majesty's Principal Secretaries of State;
- (2). In the city of London and the liberties thereof, the commissioner of city police, subject to the approbation of the lord mayor of the said city;
- (3). In any borough in which this act may be in force, the superintendent or other chief officer of police in the said borough, subject to the approbation of the mayor;
- (4). In any district of improvement commissioners in which this act may be in force, the superintendent or other chief officer of police in the said district, subject to the approbation of the chairman of the commissioners.

9. A corporate borough or board of improvement commissioners may adopt this act by a resolution of the council or board assembled at a meeting held for the purpose, of which such notice has been given and which is required to be summoned on such requisition of the ratepayers as is required in the case of the adoption of the said Local Government Act, 1858, by a corporate borough, or in a district of improvement commissioners, to which the Local Government Act has not been applied, in pursuance of sects. 12 and 13 of the said Local Government Act, and notice of the adoption of this act shall be given to the Secretary of State as in the case of the adoption of the said Local Government Act.

This act shall come into operation in a corporate borough or district of improvement commissioners in which a resolution adopting the same has been passed at the expiration of one month from the date of the passing of the resolution; and no objection whatever to the legality of the adoption of this act by any corporate borough or board of improvement commissioners shall be made at any trial or in any legal proceeding after the expiration of three months from the date of the passing of the resolution adopting the same.

10. Nothing herein contained shall apply to the sale at a railway station between the hours of one and four o'clock in the morning of exciseable liquors or refreshments to persons arriving at or departing from such station by railroad.

CAP. LXV.

An Act for amending the Law relating to the Removal of Clerks of the Peace. [25th July, 1864.]

Sect. 1. *Short title.*

2. *As to removal of a clerk of the peace when guilty of misconduct otherwise than in execution of his office.*

3. *Power to appeal to the Lord Chancellor.*

4. *Definition of "county" and "clerk of the peace."*

Whereas by the 6th section of the act of the 1 Will. & M. c. 21, it was enacted, that if in any county, riding, division, or place any clerk of the peace already nominated or thereafter to be nominated should misbehave himself in the execution of his office, and thereupon complaint in writing of the said misbehaviour should be exhibited against him to the justices of the peace in their general quarter sessions, it should be lawful for the said justices or the major part of them, from time to time, upon examination, and due proof thereof, openly in their said general quarter sessions, to suspend or discharge him from the said office; and in such case the custos rotulorum or other person to whom the right of nomination belonged should appoint another sufficient person to be a clerk of the peace, as in the said act mentioned: and whereas cases have occurred in which clerks of the peace have been guilty of such misconduct as to render them unfit to hold their offices, but the justices have been unable to remove them by reason that such misconduct did not occur in the execution of their office: and whereas it is expedient to provide for such cases as lastly hereinbefore mentioned: be it enacted &c., as follows:—

Sect. 1. This act may be cited for all purposes as "The Clerks of the Peace Removal Act, 1864."

2. If it appear to any two justices of the peace of a county that the clerk of the peace of that county has, after the passing of this act, been guilty of such misconduct, otherwise than in the execution of his office, as in the opinion of the said justices to render him an unfit or improper person to hold the office of clerk of the peace, the said justices may exhibit against him to the court of general or quarter sessions of the county a complaint in writing, stating the misconduct of which the clerk has been guilty, a copy of which shall be at the same time sent to the custos rotulorum, and it shall be lawful for the said court, if satisfied, upon due examination in open court, that the clerk complained of has been guilty of the misconduct imputed to him, and that the same is such as to render him an unfit or improper person to hold his office, to suspend or remove him from his office, and a new clerk of the peace shall be appointed in manner provided by the said act in cases where a clerk of the peace has misbehaved himself in the execution of his office.

3. If the clerk of the peace complained of feels aggrieved by the decision of any court of general or quarter sessions under this act, he may, within three months after the delivery of such decision, appeal to the Lord Chancellor by motion in a summary manner, and it shall be lawful for the Lord Chancellor to reverse, confirm, or modify the decision of the said court of general or quarter sessions, or to remit the case with such directions as the Lord Chancellor may think just.

4. The word "county" in this act shall include any riding, division, or liberty of a county, or any city, borough, or other place having a separate court of quarter sessions. The expression "clerk of the peace" shall include any officer performing the duties of a clerk of the peace.

CAP. LXVI.

An Act to authorise the Inclosure of certain Lands in pursuance of a Special Report of the Inclosure Commissioners. [25th July, 1864.]

CAP. LXVII.

An Act to amend the Law in certain Cases relating to Trespasses in Pursuit of Game. [25th July, 1864.]

Sect. 1. *Landlord, &c., having reserved the exclusive right to game, to be the legal occupier. Person entering on land in pursuit of game, without consent, deemed a trespasser. Penalty for such trespass.*

2. *As to the word "game."*

3. *To extend to Ireland only.*

Sect. 1. Where the landlord or lessor of any land has reserved to himself, by any deed or writing, the exclusive right to the game on such land, then such landlord or lessor, for the purpose of prosecuting all persons for trespassing in pursuit of game on such land without his consent, shall be deemed the legal occupier of the said land; and any person who shall enter or be upon the said land in search of or pursuit of game without the consent of such landlord or lessor shall be deemed a trespasser, and shall, on conviction thereof before one or more justices of the peace sitting in petty sessions forfeit and pay such sum not exceeding 40s., together with the costs, as the said justice or justices shall think fit: and such penalty and costs shall be recovered and levied in the same mode and with the same power of appeal as are provided for the recovering and levying of any penalties under the Petty Sessions Act of the 14 & 15 Vict. c. 99, and the Petty Sessions Act of the 21 & 22 Vict. c. 100, and as if the provisions in the said acts relating to the recovery of penalties were herein expressly repeated.

2. The word "game" shall for all the purposes of this act be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, woodcocks, snipes, quails, landralls, wild ducks, widgeon, and teal.

3. This act shall extend and be construed to extend to Ireland only.

CAP. LXVIII.

An Act to amend the Local Government Act of 1858, so far as it applies to Oxford. [25th July, 1864.]

Sect. 1. Election of commissioners may take place on any day between the 1st and 15th November, 1864, as may be determined by Board of Commissioners.

2. Subsequent annual elections to take place on day so fixed.

3. Qualifications of members of local board.

CAP. LXIX.

An Act to defray the Charge of the Pay, Clothing, and contingent and other Expenses of the Disembodied Militia in Great Britain and Ireland; to grant Allowances in certain Cases to Subaltern Officers, Adjutants, Paymasters, Quartermasters, Surgeons, Assistant Surgeons, and Surgeons Mates of the Militia; and to authorise the Employment of Non-commissioned Officers. [25th July, 1864.]

Sect. 1. Secretary of State for War to issue the money required for pay, &c. of regular militia, as herein stated.

2. Members of the permanent staff to reside where the Secretary of State for War shall appoint.

3. And may be employed in their counties.

4. Quartermaster, &c. to have charge of the arms and clothing. Adjutant to issue the money for contingent expenses on an order signed by the colonel. Balance to form a stock purse. Power to Secretary of State for War to order arms, &c. to be deposited in War-office stores, while disembodied.

5. In absence of the adjutant, the sergeants to be under the command of the quartermaster, and, in his absence, of the sergeant-major.

6. Persons receiving pay as members of permanent staff of militia to be subject to Mutiny Act.

7. Militia, when called out for training or exercise, entitled to pay, &c. as herein stated.

8. The 17 & 18 Vict. c. 105, s. 43; the 22 & 23 Vict. c. 38, s. 9.

9. Volunteers attached to regiments of the line to be subject to the Mutiny Act.

10. Volunteers may be transferred to another regiment without being re-sworn.

11. Certain officers unfit for duty entitled to a retired allowance, upon making the following declaration:—Form of declaration.

12. Out pension to reduced non-commissioned officers and drummers not to be received while serving.

13. Persons on half pay, or entitled to allowance as having served in the army or navy, empowered to receive pay, &c. during training.

14. Members of the permanent staff, &c. not to lose their right to Chelsea or Kilmainham pensions, &c.

15. Allowance to be made for medicines.

16. Reduced adjutants to receive 4s. per day till the 31st July, 1865. Right to half pay reserved.

17. Allowances to adjutants, surgeons, and quartermasters.

18. Allowances granted to adjutants on completion of certain periods of service.

19. Restrictions as to allowances to reduced adjutants of the local militia.

20. A declaration to be taken by adjutants of local militia claiming the said allowance.

21. Allowance to clerks of general meetings, &c.

22. Manner of granting allowances. Clerks, &c. to make declaration of the justness of their accounts.

23. Deputy Lieutenants may require the attendance of any surgeon residing near the place of meeting for appeals. Declaration to be made by surgeon. Allowance to surgeon.

24. Pay, &c. to be issued under direction of the Secretary of State for War.

25. Bills drawn for pay, &c. may be on unstamped paper.

26. No fee to be taken.

27. All things in this act relating to counties shall extend to ridings, shires, &c.

28. Continuance of act.

CAP. LXX.

An Act to substitute fixed instead of fluctuating Incomes for the Members of certain minor Corporations in certain of the Cathedral Churches in England. [25th July, 1864.]

Sect. 1. It shall be lawful, under the authority of a scheme prepared by the Ecclesiastical Commissioners, and of an Order of her Majesty in Council ratifying the same, with the consent in writing under the common or corporate seal of any vicars choral, priest vicars, senior vicars, custos and vicars warden, and vicars or minor canons, who may constitute a corporation aggregate in any cathedral church in England, and of their visitor, for the said vicars choral, priest vicars, senior vicars, custos and vicars warden, and vicars or minor canons to transfer to and vest in the Ecclesiastical Commissioners for the purposes of the acts relating to them and subject to the provisions thereof and to the conditions which may be specified in any such scheme and order, all the lands and hereditaments heretofore belonging to such corporation, for and in consideration of any annual or other money payment to be made to such corporation by the commissioners.

CAP. LXXI.

An Act for amending and extending the Railways, Ireland, Act, 1851, and the Railways, Ireland, Act, 1860. [25th July, 1864.]

Sect. 1. The company, if dissatisfied with award, in cases exceeding 600*l.*, may traverse.

2. Power to have special jury.

3. Notice to be given to the sheriff of special jury.

4. Either party to such traverse entitled to have the premises viewed by the jury.

5. Either party may appeal from the ruling of the judge.

6. The party objecting shall deliver to the judge a note in writing, stating objection, and grounds thereof.

7. Special case, when settled and signed by the judge, to be filed.

8. Court may direct an issue or other inquiry.

9. Judgment upon special case to be equivalent to judgment of court.

10. Costs of appeal to be paid by company where appellants.

11. As to compensation in respect of lands temporarily occupied.

12. Taxation of costs.

13. Construction of term "company."

14. If company do not take possession within a fortnight of final award, value of crop to be added.

15. Within five years after the opening of a railway, the company may be called upon to make certain accommodation works, and if so, the matter shall be referred to an arbitrator.

16. Arbitrator shall have all the powers of an arbitrator appointed under the 14 & 15 Vict. c. 70, and the 23 & 24 Vict. c. 97.

17. The company shall obey the award of the arbitrator, except in certain cases.

18. This act, and the 14 & 15 Vict. c. 70, and the 23 & 24 Vict. c. 97, to be read together.

19. Short title.

CAP. LXXII.

An Act to explain certain Provisions contained in the Drainage and Improvement of Lands (Ireland) Act, 1863.

[25th July, 1864.]

Sect. 1. Monies, &c. chargeable upon undrained townland, &c. as upon drained lands.

2. Persons interested may object to inspector's report.

3. Provisions of recited act to apply to cases where lands drained by means of pumping.

4. Drainage boards may contract for erection and maintenance of works.

5. Power to companies, &c. incorporated to contract for supply of water.

6. Act and recited act to be as one.

CAP. LXXIII.

An Act to apply a Sum out of the Consolidated Fund and the Surplus of Ways and Means to the Service of the Year 1864, and to appropriate the Supplies granted in this Session of Parliament. [29th July, 1864.]

CAP. LXXIV.

An Act for raising the Sum of One million six hundred thousand Pounds by Exchequer Bonds for the Service of the Year 1864. [29th July, 1864.]

CAP. LXXV.

An Act to amend the Law relating to certain Nuisances on Turnpike Roads, and to continue certain Turnpike Acts in Great Britain. [29th July, 1864.]

Sect. 1. *Extension of provisions of the 5 & 6 Will. 4, c. 50, as to steam-engines to turnpike roads.*

2. *Continuation of acts.*

3. *The 3 & 4 Will. 4, c. c, to continue in force till Aug. 4, 1865.*

4. *Short title.*

Whereas it is expedient to amend the law relating to nuisances on turnpike roads, and to continue for limited times the acts hereinafter specified: be it enacted &c., as follows:—

Sect. 1. Whereas by the general act for the regulation of highways, passed in the session of the 5 & 6 Will. 4, c. 50, s. 70, it is, amongst other things, provided that it shall not be lawful for any person to erect or cause to be erected any steam-engine, gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards from any part of any carriageway or cartway, unless such steam-engine, gin, or other like engine or machinery be within some house or other building, or behind some wall or fence, sufficient to conceal or screen the same from the said carriageway or cartway, so that the same may not be dangerous to passengers, horses, or cattle, and a continuing penalty of 5*l.* a day is imposed for any contravention of the said provision: and whereas it is expedient that a like provision should be made with respect to turnpike roads: be it enacted, that it shall not be lawful for any person to erect or cause to be erected, or to use, any steam-engine, gin, or other like machine, within the distance of twenty-five yards from any part of any turnpike road, unless such steam-engine, gin, or other like engine shall be within some house or other building, or behind some wall, fence, or screen sufficient to conceal or screen the same from the said road, so that the same may not be dangerous to passengers, horses, or cattle; and in case any person shall offend in any of the cases aforesaid, every such person so offending shall forfeit any sum not exceeding 5*l.*, for every day during any part of which such steam-engine, gin, or engine shall be permitted to continue, contrary to the provisions of this act; which said penalties shall be levied, recovered, and applied in such and the same manner as any penalty or forfeiture for any other offence on any turnpike road may be levied, recovered, and applied; but no penalty shall be incurred under this section in respect of any locomotive engine travelling according to law on any public railway, turnpike road, or other highway.

2. The acts mentioned in the schedule to this act annexed

shall continue in force until the 1st November, 1865, and no longer, unless Parliament in the meantime continues the same; but every other act now in force for regulating, making, amending, or repairing any turnpike road in Great Britain which will expire at or before the end of the next session of Parliament shall continue in force until the 1st November, 1865, and to the end of the then next session of Parliament, except &c.

3. The act of the 3 & 4 Will. 4, c. c, intituled "An Act for continuing certain Powers to the Trustees of the Road from Kentish Town to Upper Holloway, in the County of Middlesex," shall continue in force till the 4th August, 1865, and no longer.

4. This act may be cited for all purposes as the "Annual Turnpike Acts Continuance Act, 1864."

CAP. LXXVI.

An Act to make valid defective Registration of Deeds in certain Cases, and to substitute Stamps in lieu of the Fees now payable on Proceedings in the Registrar of Deeds Office in Ireland. [29th July, 1864.]

CAP. LXXVII.

An Act to repeal and in part to re-enact certain Acts of Parliament relating to the Ionian States, and to establish the Validity of certain Things done in the said States. [29th July, 1864.]

CAP. LXXVIII.

An Act for impressing by Machinery Signatures of Names on Bank Notes and certain Bills of the Bank of Ireland. [29th July, 1864.]

CAP. LXXIX.

An Act to confirm certain Provisional Orders made under an Act of the Fifteenth Year of Her present Majesty, to facilitate Arrangements for the Relief of Turnpike Trusts. [29th July, 1864.]

CAP. LXXX.

An Act to extend the Provisions of the Criminal Justice Act, 1855, to the Liberties of the Cinque Ports and to the District of Romney Marsh, in the County of Kent. [29th July, 1864.]

Sect. 1. So much of recited act as before recited, repealed.
2. Definition of "petty sessions."

CAP. LXXXI.

An Act for amending the Act 11 & 12 Geo. 3, c. 17 (I.), in respect of the Charges on the Revenues of the Archbishopric of Armagh. [29th July, 1864.]

CAP. LXXXII.

An Act to guarantee the Liquidation of a Loan for the Service of the Colony of New Zealand. [29th July, 1864.]

CAP. LXXXIII.

An Act to confirm certain Provisional Orders under the Local Government Act, 1858, relating to the Districts of Kingston-upon-Hull, Stockport, Penzance, Shanklin, Portsmouth, Tunbridge Wells, Woolwich, and Tormoham. [29th July, 1864.]

CAP. LXXXIV.

An Act for continuing various expiring Acts. [29th July, 1864.]

Sect. 1. *Short title.*

2. *Continuance of acts in schedule.*

Whereas the several acts mentioned in the first column of the schedule hereto are wholly, or as to certain provisions thereof, limited to expire at the times specified in respect of such acts in the fourth column of the said schedule: and whereas it is expedient to continue such acts, in so far as they are temporary in their duration, for the times mentioned in respect of such acts respectively in the fifth column of the said schedule; be it enacted &c., as follows:—

Sect. 1. This act may be cited for all purposes as the "Expiring Laws Continuance Act, 1864."

2. The acts mentioned in column 1 of the said schedule, and the acts, if any, amending the same, shall, in so far as such acts, or any provisions thereof, are temporary in their duration, be continued until the times respectively specified in respect of such acts in the fifth column of the said schedule.

SCHEDULE

1. <i>Original Acts.</i>	2. <i>Amending Acts.</i>	3. <i>How far temporary.</i>	4. <i>Time of Expiration of temporary Provisions.</i>	5. <i>Continued until</i>
3 & 4 Vict. c. 91. Linen, Hempen, Cotton, and other Manufactures (Ireland).	5 & 6 Vict. c. 68. 7 & 8 Vict. c. 47.	Whole Act.	Five Years from the date of the 23 & 23 Vict. c. 25, i. e. five years from the 13th August, 1859.	13th August, 1869.
10 & 11 Vict. c. 90. Poor Laws (Ireland).	14 & 15 Vict. c. 68.	As to Appointment of Commissioners, &c.	23rd July, 1864, and End of then next Session. (26 & 27 Vict. c. 95).	23rd July, 1865, and End of then next Session.
10 & 11 Vict. c. 98. Ecclesiastical Jurisdiction.	.. ..	As to Provisions continued by 21 & 22 Vict. c. 50.	1st August, 1863, and End of then next Session. (26 & 27 Vict. c. 95).	1st August, 1865, and End of then next Session.
11 & 12 Vict. c. 32. County Cess (Ireland).	20 & 21 Vict. c. 7.	Whole Act.	1st August, 1864, and End of then next Session. (26 & 27 Vict. c. 95).	1st August, 1865, and End of then next Session.
11 & 12 Vict. c. 107. Sheep and Cattle diseased.	16 & 17 Vict. c. 62.	Whole Act.	1st August, 1864, and End of then next Session. (26 & 27 Vict. c. 95).	1st August, 1865, and End of then next Session.
14 & 15 Vict. c. 104. Episcopal and Capitular Estates Management.	17 & 18 Vict. c. 116. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124.	Whole Act.	1st January, 1864, and End of then next Session. (26 & 27 Vict. c. 95).	1st January, 1865, and End of then next Session.
17 & 18 Vict. c. 117. Incumbered Estates (West Indies).	21 & 22 Vict. c. 96. 25 & 26 Vict. c. 45.	As to Appointment of Commissioners.	2nd August, 1863, and End of then next Session. (21 & 22 Vict. c. 96).	2nd August, 1865.
24 & 25 Vict. c. 109. Salmon Fishery (England) Act.	.. ..	As to Appointment of Inspectors, s. 31.	1st October, 1864	1st October, 1865.

CAP. LXXXV.

An Act for the Prevention of Contagious Diseases at certain Naval and Military Stations. [29th July, 1864.]

- Sect. 1. Short title.
2. Interpretation of terms.
3. Act to extend only to places in schedule.
4. Provision as to expenses of act.
5. Appointment of inspector of hospitals under this act.
6. Hospitals to be examined and reported on.
7. Power to certify hospitals on such examination and report.
8. Hospital to be inspected from time to time.
9. Power to withdraw certificate.
10. The granting or withdrawal of certificate to be published in Gazette.
11. On information, justice may issue to woman named in information a notice, as in second schedule.
12. Constable to serve notice on woman.
13. Justice may order medical examination at certified hospital.
14. Medical examination at certified hospital.
15. Power for woman to submit to examination voluntarily.
16. Under order of justice woman may be detained for medical treatment in hospital.
17. Penalty for refusing to be examined, or to conform to rules, or quitting hospital.
18. Penalty for permitting prostitute having contagious disease to resort to any house, &c. for prostitution.
19. Application of the 11 & 12 Vict. c. 43, and the 14 & 15 Vict. c. 93.
20. Forms in second schedule to be used.
21. Limitation of actions, &c.
22. As to time of this act coming into force.
23. Continuance of act.

CAP. LXXXVI.

An Act to permit for a limited Period Compositions for Stamp Duty on Bank Post Bills of Five Pounds and upwards in Ireland. [29th July, 1864.]

CAP. LXXXVII.

An Act to amend the Law relating to Publication of Accounts of Corn imported, and to Returns of Purchases and Sales of Corn. [29th July, 1864.]

CAP. LXXXVIII.

An Act for the better Regulation of the Traffic on Westminster Bridge, and for the Prevention of Obstructions thereon. [29th July, 1864.]

CAP. LXXXIX.

An Act to amend the Defence Act, 1842. [29th July, 1864.]

CAX. XC.

An Act to amend an Act of the present Session, c. 18, as to the Stamp Duties on certain Letters or Powers of Attorney. [29th July, 1864.]

- Sect. 1. *Letters of attorney for the sale, &c. of Government stock, how to be charged with stamp duty.*
2. *As to letters requesting that dividends or interest of stocks, &c. may be paid to nominees.*

Whereas by an act passed in the present session of Parliament [27 & 28 Vict. c. 18, certain stamp duties are granted and imposed for and upon any letter or power of attorney for the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds, and also for and upon any letter or power of attorney for the receipt of dividends of any such stocks or funds; and doubts have arisen whether both the said duties may not be chargeable upon one and the same instrument: be it enacted &c., as follows:—

Sect. 1. No letter or power of attorney made for the sale, transfer, or acceptance of any of the Government or Parliamentary stocks or funds, and duly stamped in that behalf, shall be chargeable with any further or other stamp duty by reason of its containing therein any authority for the receipt of dividends on any such stocks or funds.

2. And whereas doubts have arisen as to whether certain letters or writings hereinafter described are chargeable with

stamp duty as letters or powers of attorney: be it enacted, that no letter or other writing under hand only containing any request or direction to any joint stock or other company or society, or to any secretary, treasurer, or other officer thereof, or to any banker, by the owner or proprietor of any stocks, funds, or shares of or in any such company or society, to pay the dividends or interest arising from any such stocks, funds, or shares to any person named in such order, request, or direction, shall be chargeable with stamp duty as a letter or power of attorney.

CAP. XCL

An Act for the more effectual Protection of Her Majesty's Naval and Victualling Stores. [29th July, 1864.]

- Sect. 1. *Short title.*
2. *Extent of act.*
3. *Interpretation of terms.*
4. *25 & 26 Vict. c. 84, repealed as to future offences.*
5. *Marks in schedule appropriated for her Majesty's naval and victualling stores. Imitation a misdemeanour.*
6. *Obtiteration, with intent to conceal her Majesty's property, felony.*
7. *Knowingly receiving &c. marked stores a misdemeanour.*
8. *Knowledge of stores being marked presumed against dealers, &c.*
9. *Offenders may be summarily convicted in certain cases.*
10. *Effect of conviction of dealer in old metals.*
11. *Persons, not dealers in marine stores, &c., found in possession of naval or victualling stores, and not satisfactorily accounting for the same, liable to penalty.*
12. *Criminal possession explained.*
13. *No unauthorised person to creep, sweep, &c. for stores within 100 yards of dockyards, &c.*
14. *Sects. 98, 99, 100, 103, 105, 107 to 113, and 115 to 121, of the 24 & 25 Vict. c. 96, incorporated with this act.*
15. *None but the Admiralty to prosecute.*
16. *Penalties, &c. to be applied under orders of Admiralty.*
17. *Not to prevent persons being indicted under this act, &c.*

Be it enacted &c., as follows:—

Sect. 1. This act may be cited as the "Naval and Victualling Stores Act, 1864."

2. This act shall not extend to Scotland or Ireland.

3. In this act—

The term "the Admiralty" means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral:

The term "dealer in marine stores" means a person bound to conform to the regulations of the Merchant Shipping Act, 1854, sect. 480:

The term "dealer in old metals" has the same meaning as in the Old Metal Dealers Act, 1861:

The term "in her Majesty's service," when applied to persons, applies also to persons in the employment of the Admiralty:

The term "stores" includes any single store or article.

4. The Naval and Victualling Stores Act, 1862, is hereby repealed; but this repeal, or anything in this act, shall not apply to, or in respect of, any offence, act, or thing committed or done before the passing of this act.

5. The marks described in the schedule to this act may be applied in or on her Majesty's naval and victualling stores to denote her Majesty's property in stores so marked.

It shall be lawful for the Admiralty, their contractors, officers, and workmen, to apply the said marks, or any of them, in or on any such stores as are described in the said schedule.

If any person, without lawful authority (proof of which authority shall lie on the party accused), applies any of the said marks in or on any such stores, he shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

6. If any person, with intent to conceal her Majesty's property in any naval or victualling stores, takes out, destroys,

or obliterates, wholly or in part, any such mark as aforesaid, he shall be guilty of felony, and shall be liable, in the discretion of the court, to be kept in penal servitude for any term not exceeding four years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

7. If any person, without lawful authority (proof of which authority shall lie on the party accused), receives, possesses, keeps, sells, or delivers any naval or victualling stores bearing any such mark as aforesaid, knowing them to bear such mark, he shall be guilty of a misdemeanour, and shall be liable to be imprisoned for any term not exceeding one year, with or without hard labour.

8. Where the person charged with such a misdemeanour as last aforesaid was, at the time at which the offence is charged to have been committed, a dealer in marine stores, or a dealer in old metals, or in her Majesty's service, knowledge on his part that the stores to which the charge relates bore such mark as aforesaid shall be presumed until the contrary is shown.

9. Any person charged with such a misdemeanour as last aforesaid in relation to stores, the value of which does not exceed 5*l.*, shall be liable, on summary conviction before a justice of the peace, to a penalty not exceeding 20*l.*; or, in the discretion of the justice, to be imprisoned for any term not exceeding six months, with or without hard labour.

10. Every conviction of a dealer in old metals, for any offence in this act expressed to be a felony or misdemeanour, shall, for the purposes of registration and its consequences, under the Old Metal Dealers Act, 1861, be equivalent to a conviction under that act.

11. In order to prevent a failure of justice in some cases by reason of the difficulty of proving knowledge of the fact that stores bore such a mark as aforesaid,—

If any naval or victualling stores bearing any such mark are found in the possession of any person not being a dealer in marine stores or a dealer in old metals, and not being in her Majesty's service, and such person, when taken or summoned before a justice of the peace, does not satisfy the justice that he came by the stores so found lawfully, he shall be liable, on conviction by the justice, to a penalty not exceeding 5*l.*; and if any such person satisfies the justice that he came by the stores so found lawfully, the justice, at his discretion, as the evidence given and the circumstances of the case require, may summon before him every person through whose hands such stores appear to have passed, and if any such person as last aforesaid who has had possession thereof does not satisfy the justice that he came by the same lawfully, he shall be liable, on conviction by the justice, to a penalty not exceeding 5*l.*

12. For the purposes of this act, stores shall be deemed to be in the possession or keeping of any person if he knowingly has them in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or inclosed, whether occupied by himself or not, and whether the same are so had for his own use or benefit or for the use or benefit of another.

13. It shall not be lawful for any person, without permission in writing from the Admiralty, or from some person authorised by the Admiralty in that behalf, to creep, sweep, dredge, or otherwise search for stores in the sea or any tidal water within 100 yards from any vessel belonging to her Majesty, or in her Majesty's service, or from any mooring place or anchoring place appropriated to such vessels, or from any moorings belonging to her Majesty, or from any of her Majesty's wharves, or dock, victualling, or steam factory yards.

If any person acts in contravention of this provision, he shall be liable, on summary conviction before a justice of the peace, to a penalty not exceeding 5*l.*, or to be imprisoned for any term not exceeding three months, with or without hard labour.

14. The following sections of the 24 & 25 Vict. [c. 96], "to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences," shall be incorporated with this act, and shall for the purposes of this act be read as if they were here re-enacted, namely, sects. 98 to 100, 103, 105, 107 to 113, and 115 to 121, all inclusive; and for this purpose the expression "this act," when used in the said incorporated sections, shall be taken to include the present act.

15. It shall not be competent for any person, other than the Admiralty, to institute or carry on under this act any prosecution or proceeding for any offence.

16. Notwithstanding anything in any act relating to municipal corporations or to the metropolitan police force or in any other act, any pecuniary penalty or other money recovered under this act shall be paid or applied as the Admiralty direct.

17. Nothing in this act shall prevent any person from being indicted under this act or otherwise for any indictable offence made punishable on summary conviction by this act, or prevent any person from being liable under any other act or otherwise to any other or higher penalty or punishment than is provided for any offence by this act, so that no person be punished twice for the same offence.

SCHEDULE.

MARKS appropriated for Her Majesty's Use in or on Naval and Victualling Stores.

Stores.	Marks.
Hempen cordage and wire rope.	White, black, or coloured worsted threads laid up with the yarns and the wire respectively.
Canvas, fearnought, hammocks, and seamen's bags.	A blue line in a serpentine form.
Buntin - - - -	A double tape in the warp.
Candles - - - -	Blue or red cotton threads in each wick, or wicks of red cotton.
Timber, metal, and other stores not before enumerated.	The broad arrow.

CAP. XCII.

An Act for annexing Conditions to the Appointment of Persons to Offices in the Governing Bodies of certain Public Schools and Colleges. [29th July, 1864.]

Sec. 1. *Short title.*

2. *Persons appointed after passing of act to take office subject to future legislation.*

3. *Definition of "governing body."*

4. *Duration of act.*

Whereas a commission was issued in the year 1861, under letters-patent of her Majesty, for the purpose of inquiring into the nature and application of the endowments and into the administration and management of the colleges and schools named in the schedule annexed hereto: and whereas the said commission reported, amongst other things, to her Majesty, that Parliamentary legislation would be required in order to make the changes which the said commission considered desirable, in respect, amongst other things, of the governing bodies of the said colleges and schools: and whereas it is expedient that no impediment should be created to the free action of the Legislature in making the said changes, by the acquisition of vested interests in the property of the said colleges and schools by persons who may be appointed to offices in the governing bodies thereof after the date of the passing of this act: be it therefore enacted &c., as follows:—

Sec. 1. This act may be cited for all purposes as "The Public Schools Act, 1864."

2. Every person appointed after the passing of this act to any office in the governing body of any of the said colleges or schools shall take and hold that office subject to such provisions and regulations as may hereafter be enacted respecting the same.

3. "Governing body" shall mean any one of the several bodies referred to in the report of the said commissioners as being a governing body of any of the said colleges or schools, with the addition of the head master or other masters thereof; and any person appointed a member of the governing body of any such college or school as aforesaid, or a master thereof, shall be deemed to be appointed to an office in the governing body of the said college or school.

4. This act shall continue in force until the 1st August, 1865.

SCHEDULE REFERRED TO IN THIS ACT.

- Eton College.
- Winchester College.

3. The Collegiate School of St. Peter, Westminster.
4. The Charterhouse School.
5. St. Paul's School in the city of London.
6. The Merchant Taylors' School in the city of London.
7. The Free Grammar School of John Lyon at Harrow-on-the-Hill, in the county of Middlesex.
8. The school founded by Lawrence Sheriff at Rugby, in the county of Warwick.
9. The Free Grammar School of King Edward VI, at Shrewsbury.

CAP. XCIII.

An Act for confirming certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Brighton, Eastbourne, Sandown, Walton-on-the-Naze, Clevedon, Rhyl, Bray, Kircubbin, Walton (Suffolk), Holywood, Exe Bight, Lytham, Ardglass, Filey, Greenock, Carlisle, Lough, Wexford, Torquay, and Oban. [29th July, 1864.]

CAP. XCIV.

An Act to remove Disabilities affecting the Bishops and Clergy of the Protestant Episcopal Church in Scotland. [29th July, 1864.]

- Sect. 1. *Sect. 9 of the 32 Geo. 3, c. 63, repealed.*
2. *Definition of "Protestant Episcopal Church in Scotland."*
3. *Stat. 3 & 4 Vict. c. 33, in part repealed.*
4. *As to application of provisions of the 50 Geo. 3, c. 60.*
5. *Persons admitted into holy orders by bishops in Scotland not to be admitted to benefices, &c. in England or Ireland without consent of the bishop of the diocese.*
6. *Penalty on such persons officiating in certain cases without consent of bishop.*

Whereas an act was passed in the 32 Geo. 3, [c. 63], intitled "An Act for granting Relief to Pastors, Ministers, and Lay Persons of the Episcopal Communion in Scotland;" and whereas, by the 9th section of the said act, it is provided and declared, that "no person exercising the function, or assuming the office and character, of a pastor or minister of any order in the Episcopal Communion in Scotland as aforesaid shall be capable of taking any benefice, curacy, or other spiritual promotion within that part of Great Britain called England, the dominion of Wales, or the town of Berwick-upon-Tweed, or of officiating in any church or chapel within the same, where the liturgy of the Church of England as now by law established is used, unless he shall have been lawfully ordained by some bishop of the Church of England or of Ireland;" and whereas an act was passed in the 3 & 4 Vict. [c. 33], intitled "An Act to make certain Provisions and Regulations in respect to the Exercise within England and Ireland of their Office by the Bishops and Clergy of the Protestant Episcopal Church in Scotland; and also to extend such Provisions and Regulations to the Bishops and Clergy of the Protestant Episcopal Church in the United States of America; and also to make further Regulations in respect to Bishops and Clergy other than those of the United Church of England and Ireland;" by which act the provisions in the said 9th section of the said first-recited act were altered, extended, and amended: and whereas it is expedient that the disabilities affecting the bishops and clergy of the said Protestant Episcopal Church in Scotland imposed by the said recited acts should be removed, and for that purpose that the said recited acts should be in part repealed: and whereas, by an act passed in the 50 Geo. 3, [c. 60], intitled "An Act to permit the Archbishops of Canterbury and York, and the Bishop of London for the Time being, to admit Persons into Holy Orders specially for the Colonies," it is enacted, that "no person who shall have been admitted into holy orders by the Bishops of Quebec, Nova Scotia, or Calcutta, or by any other bishop or archbishop than those of England or Ireland, shall be capable of officiating in any church or chapel of England or Ireland, without special permission from the archbishop of the province in which he proposes to officiate, or of having, holding, or enjoying, or of being admitted to, any parsonage or other ecclesiastical preferment in England or Ireland, or of acting as curate therein, without the consent and approbation of the archbishop of the province, and

also of the bishop of the diocese in which any such parsonage or ecclesiastical preferment or curacy may be situated: and whereas doubts may arise after the passing of this act, whether the provisions of the said last-recited act would apply to persons admitted into holy orders by bishops of the Protestant Episcopal Church in Scotland, and it is expedient that such doubts should be removed: be it therefore enacted &c., as follows:—

Sect. 1. The said 9th section of the said first-recited act is hereby repealed.

2. The words "Protestant Episcopal Church in Scotland" shall, for the purposes of this act, mean the Episcopal Communion in Scotland as mentioned in the said first-recited act.

3. The said second-recited act, so far only as it relates to the Protestant Episcopal Church in Scotland, or the bishops and clergy thereof, is hereby repealed.

4. The provisions and enactments of the said last-recited act shall not be, or be held to be, applicable to any person admitted into holy orders by a bishop of the Protestant Episcopal Church in Scotland.

5. No person admitted into holy orders by any bishop of the Protestant Episcopal Church in Scotland shall be entitled to be admitted or instituted to any benefice or other ecclesiastical preferment in England or Ireland, without the consent and approbation of the bishop of the diocese in which such benefice or other ecclesiastical preferment may be situated; and any such bishop shall be entitled to refuse such consent and approbation without assigning reason for such refusal, any law or practice to the contrary notwithstanding; and every such person seeking to be admitted or instituted to such benefice or other ecclesiastical preferment, or to be licensed to any curacy, shall, before being admitted, instituted, or licensed, make and subscribe before such bishop every such declaration and subscription as he would by law have been required to make and subscribe at his ordination, if he had been ordained by a bishop of the United Church of England or Ireland: provided always, that the provisions of this section shall not apply to any such person who shall hold, or shall have held, any benefice or ecclesiastical preferment in England or Ireland.

6. Any person admitted into holy orders by any bishop of the Protestant Episcopal Church in Scotland, and who does not hold, or who has not held, any benefice or ecclesiastical preferment in England or Ireland, who shall knowingly officiate on more than one day within three months in any church or chapel in any diocese in England or Ireland, without notifying the same to the bishop of the diocese in which such church or chapel is situate, or who shall officiate contrary to any injunction of the bishop of the diocese under his hand and seal, shall, for every such offence, forfeit and pay the sum of 10*l.* to the Governor of Queen Anne's Bounty, to be recovered by action of debt, brought in the name of the treasurer of the said bounty, in any of her Majesty's courts of record at Westminster, or in the Court of Session in Scotland at the suit of the public prosecutor, or in Ireland in any court of common law in the name of the Ecclesiastical Commissioners.

CAP. XCV.

An Act to amend the Act of the 9 & 10 Vict. c. 93, for compensating the Families of Persons killed by Accident. [29th July, 1864.]

- Sect. 1. *Where no action brought within six months by executor of person killed, then action may be brought by persons beneficially interested in the result of the action.*
2. *Money paid into court may be paid in one sum, without regard to its division into shares. If not accepted the defendant entitled to verdict on the issue.*
3. *This and recited act to be read as one.*

Whereas by an act passed in the session of Parliament holden in the 9 & 10 Vict. [c. 93], intitled "An Act for compensating the Families of Persons killed by Accident," it is amongst other things, provided, that every such action as therein mentioned shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused as therein mentioned, and shall be brought by and in the name of the executor or administrator of the

person deceased: and whereas it may happen by reason of the inability or default of any person to obtain probate of the will or letters of administration of the personal estate and effects of the person deceased, or by reason of the unwillingness or neglect of the executor or administrator of the person deceased to bring such action as aforesaid, that the person or persons entitled to the benefit of the said act may be deprived thereof; and it is expedient to amend and extend the said act as hereinafter mentioned: be it therefore enacted &c., as follows:—

Sect. 1. If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the said act, that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator no such action as in the said act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be, as if it were brought by and in the name of such executor or administrator.

2. And whereas by the 2nd section of the said act it is provided that the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct: be it enacted and declared, that it shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

3. This act and the said act shall be read together as one act.

CAP. XCVI.

An Act to enable certain Royal and Parliamentary Burghs in Scotland to avail themselves of the Provisions of the Acts 22 & 23 Vict. c. 66, and 23 & 24 Vict. c. 146, for regulating the Sale of Gas. [29th July, 1864.]

CAP. XCVII.

An Act to make further Provision for the Registration of Burials in England. [29th July, 1864.]

Sect. 1. *All burials to be registered.*

2. *By whom books to be kept.*

3. *Copies of registers to be sent to registrar of diocese.*

4. *Penalty for failure to comply with act.*

5. *Registers to be evidence.*

6. *Registers to be subject to regulations of the 6 & 7 Will. 4, c. 86, as to searches, &c.*

7. *As to "burial ground."*

8. *Short title.*

Whereas provision is made by law in England for the registration of burials performed according to the rites of the Established Church, and of all burials in grounds provided under the Burial Acts: and whereas it is expedient that all burials in England be registered: be it therefore enacted &c., as follows:—

Sect. 1. All burials in any burial ground in England which are not now by law required to be registered shall be registered in register books to be provided for each such burial ground by the company, body, or persons to whom the same belongs, and to be kept for that purpose, according to the laws in force by which registers are required to be kept by rectors, vicars, or curates of parishes or ecclesiastical districts in England.

2. Such register books shall be so kept for every such burial ground by some officer or person to be appointed to

that duty by the company, body, or persons to whom such burial ground belongs.

3. Copies of the register books kept under this act for every such burial ground shall be from time to time made, verified, and signed by such officer or person as aforesaid, and sent by him to the registrar of the diocese wherein the burial ground to which the same relates is situate, to be kept with the copies of the register books of the parishes within such diocese.

4. If any such company, body, or persons, or any such officer or person as aforesaid, wilfully fail to comply with any of the provisions of this act, they or he shall be guilty of an offence against this act, and, on summary conviction thereof before a justice of the peace, shall be liable for every such offence to a penalty not exceeding 5*l*.

5. The register books kept under this act, or copies thereof, or extracts therefrom, shall be received in all courts as evidence of the burials entered therein.

6. The register books kept under this act shall, as to searches therein, and copies thereof, and extracts therefrom, be subject to the regulations of the act of the 6 & 7 Will. 4 [c. 86], "for registering births, deaths, and marriages in England," so far as those regulations relate to register books of burials kept by rectors, vicars, or curates.

7. In this act the term "burial ground" includes a vault or other place where any body is buried.

8. This act may be cited as "The Registration of Burials Act, 1864."

CAP. XCVIII.

An Act for extending the Provisions of the Bleaching and Dyeing Works Act, 1860. [29th July, 1864.]

Sect. 1. *Extension of Bleaching and Dyeing Works Act.*

2. *Short title.*

Whereas by the act of the session of the 23 & 24 Vict. c. 78, and hereinafter referred to as the Bleaching and Dyeing Works Act, 1860, the employment of women, young persons, and children in the process of finishing any yarn or cloth of cotton, wool, silk, or flax, or any of them, or any mixture of them, or any yarn or cloth of any other material or materials, is placed under the regulations of the acts therein recited, and generally known and hereinafter referred to as the Factory Acts, in cases where the said process is carried on in bleaching and dyeing works in which steam, water, or other mechanical power is used: and whereas by the act of the session of the 26 & 27 Vict. c. 38, the provisions of the said Bleaching and Dyeing Works Act, 1860, are extended to the employment of women, young persons, and children in calendering and finishing works in which steam, water, or other mechanical power is used: and whereas the process of finishing is carried on in other works besides those specified in the said acts, and as so carried on is attended with the same evils to the health of the women, young persons, and children employed as in the above-mentioned works: and whereas it is expedient that the process of finishing, wheresoever carried on, should be regulated in the same manner as it is regulated in the above-mentioned works, and that the provisions of the Factory Acts should also be extended to the employment of women, young persons, and children in the processes of hooking or lapping, or making-up and packing: be it enacted &c., as follows:—

Sect. 1. After the passing of this act, all such provisions of the said Bleaching and Dyeing Works, 1860, as are now in force, shall apply to women, young persons, and children employed for hire in any building or premises whatever in the processes of finishing, hooking, or lapping, or of making-up and packing, any yarn of cloth or cotton, wool, silk, or flax, or any of them, or any mixture of them, or any yarn or cloth of any other material or materials, or any of such processes; and in the construction of the said Bleaching Act of 1860, and the acts therein recited, "bleaching works," and "dyeing works," and "factory" shall include any buildings or premises in which the said processes or any of them are carried on: provided always, that this act shall not apply to any building or premises in which all the persons employed are males over the age of fourteen years; provided also, that in buildings and premises within this act the owner or owners may from time to time, by notice to be given in writing to the inspector, elect what shall be the working hours in such buildings and premises, so as that the total number of hours

during which females, young persons, and children may be lawfully employed in any one day or week, according to the provisions of the said recited act, be not exceeded, and so as the working hours elected be between six in the morning and six in the evening, or seven in the morning and seven in the evening, or eight in the morning and eight in the evening.

2. This act may be cited for all purposes as "The Bleaching and Dyeing Works Act Extension Act, 1864."

CAP. XCIX.

An Act to amend the Procedure of the Civil Bill Courts in Ireland. [29th July, 1864.]

CAP. C.

An Act to confirm certain Proceedings of the Justices for the County of Sussex. [29th July, 1864.]

Section 1. Basis for county rate and rates in either division declared valid.

2. Power to justices in either division to make rates separately.

3. Courts of quarter sessions that have been held in either division to be deemed to have been duly held, notwithstanding any want of adjournment.

4. Indemnity clause.

CAP. CI.

An Act to amend the Act for the better Management of Highways in England. [29th July, 1864.]

Section 1. *Short titles of Highway Acts.*

2. *This act shall be construed with the 25 & 26 Vict. c. 61.*

3. *Definition of "poor-law parish," "highway parish," "highway rate," and "county."*

4. *Amendment of sect. 6 of Highway Act of 1862.*

5. *Certain places to be deemed places separately maintaining their own highways.*

6. *Part of sect. 5 of Highway Act of 1862, repealed, and other provisions enacted.*

7. *Amendment of sect. 7 of Highway Act of 1862, as to combination of townships, &c.*

8. *Provision for places partly within and partly without a borough.*

9. *Power of justices as to extra-parochial places.*

10. *Part of sect. 6 of Highway Act of 1862, as to meetings of board, repealed, and other provisions enacted.*

11. *Power to justices to bring Highway Act into operation on a particular day.*

12. *Publication of order in Gazette made permissive.*

13. *As to union of parishes in different counties.*

14. *Amendment of sect. 39 of Highway Act, 1862.*

15. *As to the costs of parishes applying to be removed from one district to another.*

16. *As to validity of order of justices.*

17. *Extent of powers of justices.*

18. *Definition of "provisional and final orders."*

19. *Appointment and vote of waywardens.*

20. *Power to waywardens to contract for supply or cartage of materials.*

21. *Provisions for discontinuance of maintenance of unnecessary highways.*

22. *Highway board may contract to repair highways for the repair of which other parties are liable.*

23. *Amendment of sect. 34 of Highway Act, 1862.*

24. *Amendment of sect. 35 of Highway Act of 1862.*

25. *Sect. 74 of the 5 & 6 Vict. c. 50, repealed, and other provisions made as to cattle found straying, &c. on highways.*

26. *As to service of notices issued by highway board.*

27. *Schedule to Highway Act of 1862, repealed, and other regulations made.*

28. *Amendment of sect. 43 of Highway Act, 1862.*

29. *Qualification of ex officio waywardens.*

30. *Appointment of officers of board.*

31. *Power to appoint paid collectors of highway rates.*

32. *Repeal of sects. 20, 21, 22, 23, and 24 of Highway Act, 1862. Expenses how to be charged.*

33. *Mode of defraying expenses of the highway board.*

34. *Power to levy rates for making payments to highway board.*

35. *Mode of enforcing payments to highway boards.*

36. *Sects. 25, 26, and 30 of Highway Act, 1862, repealed, and other provisions substituted.*

37. *Persons aggrieved by rates levied may appeal in manner provided by the 6 & 7 Will. 4, c. 96.*

38. *Power to appeal to quarter sessions against item of expense and expenditure, &c.*

39. *Conditions of appeal to general or quarter sessions.*

40. *Power to refer case to arbitration.*

41. *Provisions of the 17 & 18 Vict. c. 125, incorporated.*

42. *Proceedings on appeal.*

43. *Costs of appeal.*

44. *Jurisdiction as to districts in different counties.*

45. *In case of default of highway board appointing officers.*

46. *Jurisdiction of justices in petty sessions.*

47. *Power of highway board to make improvements and borrow money for the same, but previously to cause an estimate to be made.*

48. *Definition of improvements.*

49. *Power for parishes and districts to contribute to improvements.*

50. *Certain clauses of the 10 & 11 Vict. c. 10, incorporated.*

51. *As to incroachment on highways.*

52. *Power to contract for materials for repairing highways.*

53. *The 8 & 9 Vict. c. 18, and the 23 & 24 Vict. c. 106, incorporated.*

Whereas it is expedient to amend an act passed in the session holden in the 25 & 26 Vict. c. 61, and intitled "An Act for the better Management of Highways in England:" be it enacted &c., as follows:—

Preliminary.

Section 1. The acts hereinafter mentioned may be cited for all purposes by the short titles following; that is to say,

The act passed in the session of the 5 & 6 Will. 4, c. 50, and intitled "An Act to consolidate and amend the Laws relating to Highways in that Part of Great Britain called England," by the short title of the "Highway Act, 1835:"

The said act passed in the session of the 25 & 26 Vict. c. 61, by the short title of "The Highway Act, 1862:"

This act by the short title of "The Highway Act, 1864." All the above-mentioned acts and any acts passed or to be passed amending the same, shall be included under the short title of "The Highway Acts."

2. This act, so far as is consistent with the tenor thereof, shall be construed as one with the Highway Act, 1862.

3. "Poor-law parish" shall mean a place that separately maintains its own poor:

"Highway parish" shall mean a place that after the constitution of a highway district separately maintains its own highways, and is entitled to return a waywarden or waywardens to the highway board of the district:

"Highway rate" shall include any rate, whether poor rate or not, out of the produce of which moneys are payable in satisfaction of precepts of a highway board:

"County" shall include any division of a county that has a separate county treasurer.

Amendments as to Orders of Justices.

4. Where more highway districts than one are comprised in any order of justices, whether provisional or final, and whether made before or after the passing of this act, the formation of each of such districts is to be deemed independent of the formation of any other district, and the order shall for all purposes be construed and take effect as if a separate order had been made in respect of each district; and any variation in a provisional order altering the parishes in any one or more districts comprised in that order shall make that order provisional only as to the particular district or districts in which the alterations are made, and not as to any other district or districts included in the same order.

5. Any parish, township, tithing, hamlet, or other place having a known legal boundary in which there are no highways repairable at the expense of the place, or in which the

highways are repaired at the expense of any person, body politic or corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever than out of a highway rate or other general rate, shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways.

Where part of a parish is, in pursuance of the Local Government Act, 1858, Amendment Act, 1861, sect. 9, treated as forming part of a district constituted under the Local Government Act, 1858, for all purposes connected with the repair of highways, and the payment of highway rates, but for no other purpose, such part shall, for the purposes of the Highway Act, 1862, and this act, be deemed to be a place separately maintaining its own highways, and capable of being included in a highway district, without requiring the consent of the local board to be given.

Where the highways of one part of a parish are, in pursuance of a private act of Parliament, repairable out of a different rate from that out of which the highways of the other part are repairable, each of such parts shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways.

6. There shall be repealed so much of the 5th section of the Highway Act, 1862, as provides, that "when it is proposed that only part of a county shall be divided into a highway district, not less than two out of the five justices making such proposal shall be resident in the said district;" and in lieu thereof be it enacted, that when it is proposed that only part of a county is to be constituted a highway district, not less than two out of the five justices making such proposal shall be resident in the said district, or acting in the petty sessional division in which such district, or some part thereof, is situate.

7. The power given by the 7th section of the Highway Act, 1862, of combining townships, tithings, hamlets, or places separately maintaining their own highways, and situate in a poor-law parish, shall extend to combining any two or more of such townships, tithings, hamlets, or places, and any combination so formed shall, for all the purposes of the Highway Acts, be deemed to be a highway parish.

Where a township, tithing, hamlet, or other place separately maintaining its own highways, is situate in two or more poor-law parishes, each part of such township, tithing, hamlet, or other place, may be combined with the parish in which that part is situate.

The justices may, by their provisional and final order, declare that any poor-law parish within their jurisdiction, or residue of a poor-law parish, after excluding such part, if any, as is prohibited by the Highway Act, 1862, either wholly or without the consent of the governing body, from being included in the highway district, shall henceforward become a highway parish; and upon such declaration being made, such poor-law parish, or residue of a poor-law parish, shall thereafter be a highway parish entitled to return a waywarden or waywardens to the highway board of the district in which it is included; and no rate shall be separately levied for the maintenance of the highways, and no separate waywardens be elected in any township, tithing, hamlet, or other subdivision of such poor-law parish, or residue of a poor-law parish.

Where, previously to the passing of the provisional order forming a highway district, no surveyors or waywardens have been elected within any highway parish in that district, and where the mode of electing a waywarden or waywardens in such parish is not provided by this act or the Highway Act, 1862, the justices shall, by their provisional and final orders constituting the district, or by any subsequent provisional and final orders, make provisions for the annual election of a waywarden or waywardens for such parish.

8. Where a parish or place separately maintaining its own highways, is situate partly within and partly without the limits of a borough, the justices may, by their provisional and final orders, include in a highway district the outlying part of such parish or place; and where the outlying part of a parish or place situate as aforesaid has been, previously to the passing of this act, or may be hereafter, included in a highway district, each part of such parish or place shall, for all the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways; and a waywarden or waywardens shall be elected by the ratepayers in

each such part, at such time and in such manner as may be provided by the said justices.

9. The justices in petty sessions may appoint overseers, or otherwise deal with any extra-parochial place, with a view to constituting it a highway parish, or part of a highway parish, in the same manner as the justices may deal with such place, for the purpose of constituting it a place, or part of a place, maintaining its own poor, in pursuance of the powers for that purpose given by the act of the 30 Vict. c. 19.

10. The paragraph No. 5 in the 6th section of the Highway Act, 1862, shall be repealed, and in lieu thereof be it enacted,

The first meeting of the highway board, after the formation of a district, shall be held at such time as may be appointed by the provisional or final order of the justices, so that the time appointed be not more than seven days after the expiration of the time limited by law for the election of waywardens, or, in the case of a special day being appointed for such election as hereinafter mentioned, be not more than twenty-one days after that day.

The day appointed for the first meeting of the board shall, for all the purposes of the Highway Acts, be deemed to be the day of the formation of the district; and the surveyor for the time being of every parish within the district shall continue in office until seven days after the appointment of the district surveyor, and no longer.

11. In forming a highway district under the Highway Act, 1862, the justices may, for the purpose of avoiding delay in bringing the act into operation, appoint by their final order a day on which the first election of waywardens as members of the highway board is to take place in the district.

On the day appointed for the election waywardens shall be elected in every parish in the district entitled to elect such officers, by the same persons and in the same manner by and in which waywardens are elected under the Highway Act, 1862, and all the provisions of the Highway Acts relating to the qualifications of surveyors or waywardens, and to the appointment of surveyors and waywardens by justices in the event of no election taking place, shall apply accordingly; but the waywardens elected under this section shall continue in office only until the time at which the next annual election of surveyors would have taken place in the several parishes of the district if the same had not been constituted a highway district, and at that time new waywardens shall be elected in manner provided by the Highway Acts.

12. No order of the justices forming a highway district shall be invalidated by reason of its not being published in the London Gazette; and where any reference is made in any section of the Highway Act, 1862, to the date of the publication in the Gazette of the order, such section shall be construed as if the date of the making of the final order under which the district is formed were substituted for "the date of the publication in the Gazette of the order under which the district is formed;" and any copy of the provisional or final order of the justices forming a highway district, certified under the hand of the clerk of the peace to be a true copy, shall be receivable in all courts of justice and in all legal proceedings as evidence of the formation of the district, and of the matters in the said order mentioned.

13. Contiguous places situate in different counties and places situate partly in one county and partly in another county or counties shall, for the purpose of being united in one highway district, be deemed to be subject to the jurisdiction of the justices of any county, who may make a provisional and final order constituting them an highway district, in the same manner as if all such places, or parts of places, were situate in such last-mentioned county; subject to this proviso, that the provisional and final orders of the justices of the said county shall be of no validity unless provisional and final orders to the same effect are passed either concurrently with, or subsequently to, the first-mentioned provisional and final orders by the justices of every other county in which any of the said places, or parts of places, are situate.

14. The approval of the justices of any county to any provisional order made by the justices of another county affecting any place in such first-mentioned county, in pursuance of the 39th section of the Highway Act, 1862, shall be testified by provisional and final orders of the justices of the said first-mentioned county.

The powers conferred on justices by the 39th section of the Highway Act, 1862, shall be deemed to extend to the separation of any townships, tithings, hamlets, or places separately maintaining their own highways which may have been consolidated by any previous order of the justices, and to an alteration in the number of waywardens of any parish.

15. Where, after the formation of a highway district, an application is made by any parish in that district to any court of general or quarter sessions, praying that the said parish may be removed from that district, all costs incidental to, or consequential on, such application, and the removal of the said parish shall, unless the court otherwise directs, be paid by the parish that has made the application in such manner as the said court may direct. The amount of such costs shall be raised in the same manner as if they were expenses incurred in maintaining and keeping in repair the highways of that parish.

16. No order of the justices forming a highway district, whether made before or after the passing of this act, shall be void by reason that it includes in such district a place which the justices are not entitled to include under the provisions of this act, or the Highway Act, 1862, or one of such acts; and any order containing such prohibited place shall be construed and take effect as if that place had not been mentioned therein.

All expenses properly incurred by the justices of any county in maintaining the validity of any provisional or final order made by them shall be payable out of the county rate of that county.

17. All powers and jurisdictions vested in justices by the Highway Act, 1862, and this act, or either of such acts, may from time to time be exercised in relation to highway districts, highway boards, and highway parishes already formed, as well as upon the occasion of forming new highway districts, boards, or parishes; and where an alteration is made in part only of a highway district the residue of that district shall not be affected thereby, but shall continue subject to the Highway Acts in the same manner as if no such alteration had been made.

18. The expression "provisional and final order," as used in this act, shall mean a provisional and final order passed and published in manner provided by this act and the Highway Act, 1862, with the necessary variations as to notices and otherwise.

Miscellaneous Amendments.

19. Every waywarden, before taking his seat as a member of a highway board, shall produce a certificate of his having been duly elected or appointed a waywarden, and such certificate shall, in the case of an elected waywarden, be signed by the chairman of the vestry or other meeting at which he was elected; and in the case of a waywarden appointed by justices, be signed by the justices making the appointment.

A waywarden may sit as such for more places than one, but he shall be entitled to one vote only as waywarden.

20. Whereas doubts are entertained whether the 46th section of the Highway Act of 1835 applies to a highway district: be it enacted, that that section shall not apply to the highway board of any highway district or to any parish within any highway district.

Notwithstanding anything contained in the act of the session of the 26 & 27 Vict. c. 61, or in any other act, any waywarden may contract for the supply or cartage of materials within the parish for which he is waywarden, with the license of two justices assembled at petty sessions; such license to be granted on the application of the clerk of the highway board, who must be authorised to make such application by a resolution of his board assembled at a meeting of which notice has been given.

21. When any highway board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where application is made under the Highway Act, 1835, to procure the stopping up of any highway, save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly; and for the purpose of such proceedings under this enactment, such variation shall be made in any notice, certificate, or other matter preliminary

to the making of such order as the nature of the case may require: provided, that if at any time thereafter, upon application of any person interested in the maintenance of such highway, after one month's previous notice in writing thereof to the clerk of the highway board for the district in which such highway is situated, it appear to any court of general or quarter sessions of the peace that from any change of circumstances since the time of the making of any such order as aforesaid under which the liability of the parish to repair such highway has ceased the same has become of public use, and ought to be kept in repair by the parish, they may direct that the liability of the parish to repair the same shall revive from and after such day as they may name in their order, and such liability shall revive accordingly as if the first-mentioned order had not been made; and the said court may by their order direct the expenses of and incident to such application to be paid as they may see fit.

22. The highway board of any district may from time to time contract for any time not exceeding three years with any person or body of persons, corporate or unincorporate, to repair any highways, turnpike roads, or roads over county or other bridges, or any part thereof, for the repairing of which such persons or body of persons are liable; and any persons or body of persons liable to repair any roads may contract with the highway board for the repairing any highways, inclusive as aforesaid, or any part thereof, which the highway board is liable to make or repair; and the money payable under any contract made in pursuance of this section shall be raised in the same manner and be paid out of the same rates as would have been applicable to defray the expenses of the repair of such highways if no contract had been made in respect thereto.

23. Sect. 34 of the Highway Act, 1862, shall be construed as if, instead of the words "shall be adjudged in the manner provided by the principal act to be put out of repair," the words were substituted, "shall be adjudged in manner provided by the Highway Act, 1862, to be out of repair."

24. The highway board may apply, under sect. 35 of the Highway Act of 1862, for the purpose of making any highway to which that section refers a highway to be repaired and maintained by the parish in which the same is situated, and upon such application being made the same proceedings may be had as upon the application of the person or corporation liable to repair the same.

25. The 74th section of the Highway Act, 1835, shall be repealed, and instead thereof be it enacted, if any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying on or lying about any highway, or across any part thereof, or by the sides thereof (except on such parts of any highway as pass over any common or waste or uninclosed ground), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding 5s. to be recovered in a summary manner, together with the reasonable expense of removing such animal from the highway where it is found to the fields or stable of the owner or owners, or to the common pound (if any) of the parish where the same shall be found, or to such other place as may have been provided for the purpose: provided always, that no owner of any such animal shall in any case pay more than the sum of 12. 10s., to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorised keeper of the pound: provided also, that nothing in this act shall be deemed to extend to take away any right of pasturage which may exist on the sides of any highway.

26. Any notice in respect of which no other mode of service is provided by the highway board in pursuance of powers in that behalf conferred on them, and any precept, summons, or order issued by the highway board, may be served—

By delivery of the same personally on the party required to be served; or

By leaving the same at the usual or last known place of abode of such party as aforesaid; or

By forwarding the same by post as a prepaid letter addressed to the usual or last known place of abode of such party.

In proving service of a document by post it shall be sufficient to prove that the document was properly directed, and that it was put as a prepaid letter into the post-office; and in serving notice on the overseers or the waywardens (if more

than one) of any parish it shall be sufficient to serve the same on any one of such officers in a parish.

27. The schedule annexed to the Highway Act of 1862 shall be repealed so far as relates to the proceedings of highway boards, and the proceedings of highway boards shall, after the passing of this act, be subject to the regulations contained in the first schedule to this act annexed.

28. The 43rd section of the Highway Act of 1862 shall be construed as if in the second article thereof the words "not exceeding 5l." were omitted.

29. A justice of the peace acting for the county in which a highway district is situate, if he is resident in any place which is prohibited either altogether or without the consent of the local authority from being included in a highway district by the 7th section of the Highway Act of 1862, and which is surrounded by or adjoins in any part such highway district, shall, by virtue of his office, be a member of the highway board of such district, subject to this qualification, that if in pursuance of this section any justice of the peace would be entitled to be a member of two or more highway boards in the same county, he shall, by letter under his hand, addressed to the clerk of the highway board for which he elects to act, and by him to be transmitted to the clerk of the peace of the county, declare of which of the said highway boards he elects to be a member, and having made that election he shall be bound thereby, and shall not be entitled by virtue of his office of justice to be a member of any other of the said boards.

30. The appointment of any officer of a highway board may be made by a minute of the board, signed by the chairman and countersigned by the clerk of the board, and any appointment so made shall be as valid as if it were made under the seal of the board.

31. The power of appointing paid collectors of highway rates with the consent of the inhabitants in vestry assembled, which is vested in a surveyor by the Highway Act, 1835, and all the provisions of that act relating to such appointment, shall be vested in and extend to any waywarden required to levy rates in pursuance of the Highway Act, 1862, and this act, or either of such acts; and for the purposes of this act any meeting of ratepayers entitled to elect a waywarden or waywardens shall be deemed to be included under the expression "inhabitants in vestry assembled," as used in this section and the Highway Acts.

As to Expenses of Board.

32. Sects. 20, 21, 22, 23, and 24 of the Highway Act, 1862, relating to the expenses of the board, shall be repealed, but such repeal shall not affect any rate made previously to the passing of this act, or any legal proceeding or remedy for enforcing the same.

The salaries of the officers appointed for each district, and any other expenses incurred by any highway board for the common use or benefit of the several parishes within such district, shall be annually charged to a district fund to be contributed by and charged upon the several highway parishes within such district in proportion to the rateable value of the property in each parish, but the expenses of maintaining and keeping in repair the highways of each highway parish within the district, and all other expenses legally payable by the highway board in relation to such parish, including any sums of money that would have been payable out of the highway rates of such parish if the same had not become part of a highway district, except such expenses as are in this act authorised to be charged to the district fund, shall be a separate charge on each parish.

The rateable value of the property in each parish shall be ascertained according to the valuation list or other estimate for the time being in force in such parish for the purposes of the poor rate, or if no such valuation list or estimate be in force, then in such manner as may be determined by the justices in petty sessions, subject to an appeal by any person aggrieved to the next general or quarter sessions.

33. For the purpose of obtaining payment from the several highway parishes within their district of the sums to be contributed by them, the highway board shall order precepts to be issued to the waywardens or overseers of the said parishes according to the provisions hereinafter contained, stating the sum to be contributed by each parish, and requiring the officer to whom the precept is addressed, within a time to be

limited by the precept, to pay the sum therein mentioned to the treasurer of the board.

Where a highway parish is not a parish separately maintaining its own poor, or where in any highway parish it has, for a period of not less than seven years immediately preceding the passing of the Highway Act, 1862, been the custom of the surveyor of highways for such parish to levy a highway rate in respect of property not subject by law to be assessed to poor rates, the precept of the highway board shall be addressed to the waywarden of the parish, and in all other cases it shall be addressed to the overseers.

Where the precept is addressed to a waywarden he shall pay the sum thereby required out of a separate rate, and such separate rate shall in the case of a parish in which for such period aforesaid it has been the custom of the surveyor of highways to levy a highway rate in respect of property not subject by law to be assessed to poor rate, be assessed on and levied from the persons and in respect of the property on, from, and in respect of which the same has been assessed and levied during such period as aforesaid, and in all other cases such rate shall be assessed on and levied from the persons and in respect of the property on, from, and in respect of which a poor rate would be assessable and leviable if the parish of which he is waywarden were a place separately maintaining its own poor.

No rate leviable by a waywarden under this act shall be payable until the same has been published in manner in which rates for the relief of the poor are by law required to be published.

A waywarden shall account to the highway board for the amount of all rates levied by him, and at the expiration of his term of office shall pay any surplus in his hands arising from any rate so levied, above the amount for which the rate was made, to the treasurer of the highway board, to the credit of the parish within which such rate was made, and such surplus shall go in reduction of the next highway rate that may be leviable in such parish.

Where the precept is addressed to the overseers they shall pay the sum thereby required out of a poor rate to be levied by them, or out of any monies in their hands applicable to the relief of the poor.

No contribution required to be paid by any parish at any one time in respect of highway rates shall exceed the sum of 10d. in the pound, and the aggregate of contributions required to be paid by any parish in any one year in respect of highway rates shall not exceed the sum of 2s. 6d. in the pound, except with the consent of four-fifths of the ratepayers of the parish in which such excess may be levied present at a meeting specially called for the purpose, of which ten days previous notice has been given by the waywarden of such parish, and then only to such extent as may be determined by such meeting.

All sums of money payable in pursuance of the precepts of a highway board shall, whether they are or not payable by the overseers of the poor, be subject to all charges to which ordinary highway rates are subject by law.

34. All waywardens and overseers to whom precepts of a highway board are hereby directed or authorised to be issued shall, within their respective parishes, have the same powers, remedies, and privileges, for and in respect of assessing and levying any rates required to be levied for making payments to a highway board, in the case of overseers, as they have in assessing and levying ordinary rates for the relief of the poor, and in the case of waywardens, as they would have if the parish of which they are waywardens were a place separately maintaining its own poor, and they were overseers thereof, and the rate to be levied by them were a duly authorised poor rate.

35. If any payment required to be made by the overseers or waywardens of any parish of monies due to a highway board is in arrear, it shall be lawful for any justice, on application under the hand of the chairman for the time being, or by the clerk of such board, to summon the said overseers or waywardens to shew cause at petty sessions why such payment has not been made; and the justices at such petty sessions, after hearing the complaint preferred on behalf of the board, may, if they think fit, cause the amount of payment in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said overseers or waywardens, or any of them, in like manner as monies assessed for the relief of the poor may be

levied and recovered, and the amount of such arrear, together with the costs aforesaid, when levied and recovered, to be paid to the said board.

Accounts of Board.

36. The 25th, 26th, and 30th sections of the Highway Act, 1802, shall be repealed, but such repeal shall not affect any proceeding commenced previously to the passing of this act, and instead thereof the following provisions shall be enacted; that is to say,

The accounts of every highway board shall be made up and balanced to the 31st December every year.

After the expiration of not less than fourteen days, nor more than twenty-eight days from the 31st December, the accounts shall be examined by the board, and signed by the chairman.

The board may, if they think fit, appoint any fit person not being a member or officer of the board to audit their accounts, and may award to him a reasonable compensation, to be paid out of the district fund.

Within thirty days after the signature of the accounts by the chairman the board shall cause a statement shewing the receipt and expenditure in respect of each parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars, and in such form, as the Secretary of State may direct, to be printed, and sent by post or otherwise to each member of the board, and to the overseers of every parish within the district having overseers; and the clerk of the board shall furnish a copy of such statement to any ratepayer or owner of property situate within the district, on his application, and on the payment of a sum not exceeding 1d.

The books of account of the board shall at all reasonable times be open to the inspection of any ratepayer of any highway parish within the district of the board.

37. If any person feels aggrieved by any rate levied on him for the purpose of raising moneys payable under a precept of a highway board on the ground of incorrectness in the valuation of any property included in such rate, or of any person being put on or left out of such rate, or of the inequality or unfairness of the sum charged on any person or persons therein, he may appeal to the justices in special sessions in manner provided by the act of the 6 & 7 Will. 4, c. 96, ss. 6, 7, and all the provisions of the said sections shall be applicable to such appeal.

38. Where any waywarden of a highway parish of a district, or any ratepayer of such parish, feels aggrieved in respect of the matters following:—

- (1). In respect of any order of the highway board for the repair of any highway in his parish on the ground that such highway is not legally repairable by the parish, or in respect of any other order of the board on the ground that the matter to which such order relates is one in regard to which the board have no jurisdiction to make an order;
- (2). In respect of any item of expense charged to the separate account of his parish on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the board have no authority by law to make any expenditure whatever;
- (3). In respect of any item of expenditure charged to the district fund on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the board has no authority by law to make any expenditure whatever;
- (4). In respect of the contribution required to be made by each parish to the district fund, on the ground that such amount, when compared with the contribution of other parishes in the district, is not according to the proportion required by this act;

he may, upon complying with the conditions hereinafter mentioned, appeal to the court of general or quarter sessions having jurisdiction in the district; but no appeal shall be had in respect of any exercise of the discretion of the board in matters within their discretion; and no appeal shall be had, except in respect of the matters and upon the grounds hereinafter mentioned.

39. No appeal shall be entertained by any court of general

or quarter sessions, in pursuance of this act, unless the following conditions have been complied with:—

- (1). Notice of the intention of appeal must be served by the appellant on the clerk of the highway board, in the case of an appeal against an order, within two months after the order; and in the case of an appeal in respect of any item of expense or contribution, within one month after the statement of the account of the board has been sent to each member of the board, as hereinbefore mentioned;

- (2). The notice must state the matter appealed against, and the ground of the appeal:

On the receipt of the notice, the board may serve a counter-notice on the appellant, requiring him to appear in person or by his agent at the next meeting of the board, and support his appeal. On hearing the appellant, the board may rectify the matter complained of; and if they do so to a reasonable extent, and tender to the appellant a reasonable sum for the costs of his attendance, it shall not be lawful for the appellant to proceed with his appeal. In any other case the appellant may proceed with his appeal, and the reasonable costs of his attendance on the board shall be deemed part of the costs of the appeal.

40. If at any time after notice of appeal has been given, it appears to the court of general or quarter sessions, on the application of either party, in the presence of or after notice has been given to the other party, that the matter in question in such appeal consists wholly, or in part, of matters of mere account which cannot be satisfactorily tried by the court, it shall be lawful for such court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons, to be appointed by the parties, or, in case of disagreement, by the court; and the award made on such arbitration shall be enforceable by the same process as the order of the court of quarter sessions.

41. The provisions of the Common-law Procedure Act, 1854, relating to compulsory references, shall be deemed to extend to arbitrations directed by the court of quarter sessions; and the word "court" in the said act shall be deemed to include the court of quarter sessions.

42. If upon the hearing of the appeal, it appears to the court that the question in dispute involves an inquiry as to whether a road is or is not a highway repairable by the public, or an inquiry as to any other important matter of fact, the court may either themselves decide such question, or may impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions, and submit to such jury such questions in relation to the matters of fact in dispute as the court think fit; and the verdict of such jury, after hearing the evidence adduced, shall be conclusive as to the questions submitted to them.

The questions so submitted shall be in the form, and shall be tried as nearly as may be in the manner, in which feigned issues are ordinarily tried, and the court shall decide the parties to be plaintiffs and defendants in such trials.

Subject as aforesaid, the court may, upon the hearing of any appeal under this act, confirm, reverse, or modify any order of the highway board, or rectify any account appealed against.

43. If the appellant is successful, the costs shall, unless the court otherwise orders, be paid by the board, and shall be charged to the parishes within the jurisdiction of the board other than the parish to which the appellant belongs, in the same proportions in which such parishes contribute to the common fund of the board.

If the appellant is unsuccessful, the board, if the waywarden be the appellant, may charge the costs of the appeal to the parish to which the appellant belongs, in the same manner as if they were expenses incurred in repairing the roads in such parish, and may levy the sum accordingly, and may carry the sum so levied to the account of the several parishes within the jurisdiction of the board, other than the parish to which the appellant waywarden belongs, in the same manner as if they were expenses contributed by such parishes to the common fund of the board; but if some ratepayer other than the waywarden is the appellant, the court may order the costs of the appeal to be paid by such appellant; and such costs shall be recoverable in the same manner as a penalty is recovered under the Highway Act, 1802.

44. Places situate in different counties, and places situate partly in one county and partly in another county, when

united in one highway district, shall, for all matters connected with the provisions of this act relating to appeals to quarter sessions against accounts, be deemed to be subject to the jurisdiction of the justices of the county in which the district is situate to which such places shall have been united by any provisional and final order or orders, or to which after the passing of this act any such district shall be declared to be subject by the orders constituting the same, in the same manner as if all such places or parts of places were situate in such county.

Supplemental Provisions.

45. If the highway board of a district make default in appointing a treasurer, clerk, and district surveyor, or any of such officers, in pursuance of the Highway Act, 1862, within three months after the day fixed by the justices for the holding of the first meeting of the board, or within three months after a vacancy occurring in any of the said offices, the justices in general or quarter sessions assembled may, if they think fit, appoint a person to any of the said offices in respect of which the default has been made, and may fix the salary to be paid to the officer appointed; and any such appointment shall take effect and salary be recoverable in the same manner as if the officer appointed by the justices had been appointed by the highway board of the district; and it shall not be lawful for such board, without the consent of the said justices, to remove any officer appointed by them under this section, or to lessen his salary within one year from the date of his appointment.

46. The justices assembled in petty sessions at their usual place of meeting may exercise any jurisdiction which they are authorised under the Highway Acts, or any of them, to exercise in special sessions; and no justice of the peace shall be disabled from acting as such at any petty or special or general quarter sessions in any matter merely on the ground that he is by virtue of his office a member of any highway board complaining, interested, or concerned in such matter, or has acted as such at any meeting of such board.

47. A highway board may make such improvements as are hereinafter mentioned in the highways within their jurisdiction, and may, with the approval of the justices in general or quarter sessions assembled, borrow money for the purpose of defraying the expenses of such improvements:

Previously to applying for the approval of the justices the highway board shall cause an estimate of the expense of the improvements to be made, and two months at the least before making their application shall give notice of their intention so to do.

The notice shall state the following particulars:

- (1). The nature of the work, the estimated amount of expense to be incurred, and the sum proposed to be borrowed:
- (2). The parish or parishes within the district by which the sum borrowed and the interest thereon is to be paid, and in case of more parishes than one being made liable to pay the principal and interest the annual amounts to be contributed by each parish towards the payment thereof:
- (3). The number of years within which the principal moneys borrowed are to be paid off, not exceeding twenty years, and the amount to be set apart in each year for paying off the same:
- (4). The seasons at which the application is to be made.

Notice shall be given as follows:

- (1). By transmitting a copy to the clerk of the peace for the county or division:
- (2). By placing a copy of such notice for three successive Sundays on the church door of every church of the parish or parishes on behalf of which such works are to be done, or, in the case of any place not having a church, in some conspicuous position in such place.

Upon the hearing of the application any person or persons may oppose the approval of the justices being given, and it shall be lawful for the justices to give or withhold their approval, with or without modification, as they think just.

All moneys borrowed in pursuance of this act, together with the interest thereon, shall be a first charge on the highway rates of each parish liable to contribute to the payment thereof, after paying the sums due to the highway board on account of the district fund, in the same manner, so far as

the creditor is concerned, as if the money had been borrowed on account of each parish alone; and the sums necessary to repay the said borrowed moneys, with interest, shall in each such parish be recoverable in the same manner as if they were expenses incurred by the board in keeping in repair the highways of that parish.

But it shall be the duty of the highway board, in case of any one parish paying more than its share of such borrowed money, or of the interest thereon, to make good to that parish the excess so paid out of the rates of the other parishes liable to contribute thereto.

The justices may from time to time make general orders in relation to the mode in which applications are to be made to them for their consent under this act to the borrowing of any monies.

48. The following works shall be deemed to be improvements of highways:—

- (1). The conversion of any road that has not been stoned into a stoned road:
- (2). The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges:
- (3). The doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair.

49. Any parish may, with the consent of its waywarden, contribute to any improvements made in another parish, whether situate or not in the same district, if such first-mentioned parish consider such improvements to be for its benefit; and any highway board may contribute to any improvements made in another district, if such improvements are, in the opinion of the highway board of the first-mentioned district, for the benefit of their district. The contribution to be made by one parish to another shall be payable in the same manner as if such contributions were moneys due from the contributing parish in respect of expenses incurred in keeping in repair the highways of that parish, and moneys contributed by one district to another district shall be payable out of the common fund of the contributing district.

50. The clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this act, and any mortgages or assignees may enforce payment of his principal and interest by appointment of a receiver.

In the construction of the said clauses "the commissioners" shall mean "the highway board."

Mortgages and transfers of mortgages shall be valid if made in the forms prescribed by the last-mentioned act, or in the forms appearing in the second schedule annexed to this act, or as near thereto as circumstances admit.

51. From and after the passing of this act if any person shall encroach by making or causing to be made any building, or pit, or hedge, ditch, or other fence, or by placing any dung, compost, or other materials for dressing land, or any rubbish, on the side or sides of any carriageway or cartway within fifteen feet of the centre thereof, or by removing any soil or turf from the side or sides of any carriageway or cartway, except for the purposes of improving the road, and by order of the highway board, or, where there is no highway board, of the surveyor, he shall be subject on conviction for every such offence to any sum not exceeding 40s., notwithstanding that the whole space of fifteen feet from the centre of such carriageway or cartway has not been maintained with stones or other materials used in forming highways; and it shall be lawful for the justices assembled at petty sessions, upon proof to them made upon oath, to levy the expenses of taking down such building, hedge, or fence, or filling up such ditch or pit, and removing such dung, compost, materials, or rubbish as aforesaid, or restoring the injury caused by the removal of such soil or turf, upon the person offending: provided always, that where any carriageway or cartway is fenced on both sides no encroachment as aforesaid shall be allowed whereby such carriageway or cartway shall be reduced in width to less than thirty feet between the fences on each side.

52. The highway board may and is hereby authorised to contract for purchasing, getting, and carrying the materials required for the repair of the highways, and for maintaining and keeping in repair all or any part of the highways of any

parish within their highway district, for any period not exceeding three years.

53. A highway board for the purpose of improving the highways within their district may purchase such lands or easements relating to lands as they may require; and the Lands Clauses Consolidation Act, 1845, and the act amending the same passed in the session of the 23 & 24 Vict. c. 106, shall be incorporated with this act, with the exception of the clauses relating to the purchase of land otherwise than by agreement.

In the construction of this act and the said incorporated acts this act shall be deemed to be the special act, and the board shall be deemed to be the promoters of the undertaking, and the word "land" or "lands" shall include any easement in or out of lands.

FIRST SCHEDULE.

Proceedings of Highway Boards.

1. The board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions:—
 - (a). The first meeting after the formation of the district shall be held at the time and place fixed by the order of the justices in that behalf;
 - (b). One ordinary meeting shall be held in each period of four months, and of such meetings one shall be held on some day between the 7th and 14th April;
 - (c). An extraordinary meeting may be summoned at any time, on the requisition of three members of the board, addressed to the clerk of the board;
 - (d). The quorum to be fixed by the board shall consist of not less than three members;
 - (e). Every question shall be decided by a majority of votes of the members voting on that question;
 - (f). The names of the members present at a meeting shall be recorded.
2. The board shall at the first meeting, and afterwards from time to time at their first meeting after each annual appointment of members of the board as hereafter mentioned, appoint one of their members to be chairman, and one other of their members to be a vice-chairman, for the year following such choice.
3. If any casual vacancy occur in the office of chairman or vice-chairman, the board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some member of their number to fill such vacancy; and every such chairman or vice-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.
4. If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting; and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be a chairman of such meeting.
5. In case of an equality of votes at any meeting, the chairman for the time being of such meeting shall have a second or casting vote.
6. All orders of the board for payment of money, and all precepts issued by the board, shall be deemed to be duly executed if signed by two or more members of the board authorised to sign them by a resolution of the board, and countersigned by the clerk; but it shall not be necessary, in any legal proceeding, to prove that the members signing any such order or precept were authorised to sign them, and such authority shall be presumed until the contrary is proved.

SECOND SCHEDULE.

FORMS.

Form of Mortgage.

The highway board* of the — district, in consideration of £— paid to the treasurer of the said board by A. B.,

* See sect. 50 of act.

of —, assigns unto the said A. B., his executors, administrators, and assigns, such proportion of the highway rates* leviable in the highway parish or parishes of [name the parishes] as the said sum of £— bears to the whole sum borrowed on the credit of the said rates, to hold to the said A. B., his executors, administrators, and assigns, until the said sum of £—, with interest at the rate of £— per centum per annum, is paid.

The interest on this mortgage† will be paid at —, on the — day and —days of —, in every year.

The principal will be paid at —, on the — day of —.

Given under our corporate seal this — day of —, 18—.

Transfer of Mortgage by Indorsement.

The within-named A. B., in consideration of the sum of £— paid by him to C. D., of —, hereby transfers‡ to the said C. D., his executors, administrators, and assigns, all his interest in the moneys secured by the within-written mortgage and in the within-named rates.

In witness whereof the said A. B. has hereunto set his hand and seal this — day of —, 18—.

CAP. CII.

An Act for amending the Harwich Harbour Act, 1863.
[29th July, 1864.]

CAP. CIII.

An Act to authorise the Acquisition of Lands by the Admiralty with a View to the Extension of Portsmouth Dockyard, and for other Purposes connected therewith.
[29th July, 1864.]

CAP. CIV.

An Act to extend the Powers of the Public Works (Manufacturing Districts) Act, 1863.
[29th July, 1864.]

Sect. 1. *Charge on Consolidated Fund of \$50,000l., to be at the disposal of the Public Works Loan Commissioners.*

2. *Stats. 24 & 25 Vict. c. 80, incorporated.*

3. *Power to Poor-law Board to make orders extended.*

4. *Extension of borrowing powers in certain cases.*

5. *Local authorities may allow owners to repay expenses of private improvement works in thirty years, with interest at 3l. 10s. per cent.*

6. *Construction of terms.*

7. *Short title.*

Whereas, by the Public Works (Manufacturing Districts) Act, 1863, hereinafter called the Special Act, power was given to charge the Consolidated Fund with 1,200,000l., to be at the disposal of the Public Works Loan Commissioners, who were thereby empowered to make (with the authority of an order of the Poor-law Board) advances out of the money for the time being at their disposal, whether under the special act or any other act, for the purpose of enabling local authorities in the counties therein mentioned to give employment to the labouring and manufacturing classes, by execution of works of public utility and sanitary improvement: and whereas sundry advances have been made by the said commissioners in exercise of the powers conferred upon them by the Special Act, and great benefits have been derived therefrom: and whereas the sums remaining at the disposal of the said commissioners are insufficient to meet the further advances required for effecting the objects hereinbefore mentioned, and it is expedient to make provision for that purpose, and for extending for a further period the power of the Poor-law Board to make orders for loans under the special act: be it therefore enacted &c., as follows:—

Sect. 1. For the purposes of loans under the Special Act,

* Highway rate includes poor rate, when the highways are maintained out of poor rate. See sect. 33 of act.

† Highway parish means every parish that separately returns a waywarden or waywardens to the highway board. See sect. 3 of act.

‡ The mortgage must be under the corporate seal of the board, and duly stamped. See Commissioners Clauses Act, 10 Vict. c. 18, s. 75.

§ The transfer must be under seal and duly stamped. See sect. 77 of Commissioners Clauses Act, 10 Vict. c. 18

the Commissioners of her Majesty's Treasury may from time to time, by warrant under the hands of two or more of them, cause to be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, to the account of the Commissioners for the Reduction of the National Debt, any further sum or sums of money not exceeding in the whole 350,000*l.*, such money to be applied exclusively under the Special Act, and to be at the disposal of the Public Works Loan Commissioners, in like manner in all respects as money placed at their disposal under the 24 & 25 Vict. c. 80, and the acts therein recited, subject nevertheless to the provisions of the Special Act and this act, which provisions shall have full effect, notwithstanding anything in the Public Works Loan Act, 1853, to the contrary contained.

2. All the several clauses, powers, authorities, provisoes, enactments, directions, regulations, restrictions, privileges, priorities, advantages, penalties, and forfeitures contained in, and conferred and imposed by, the said act of the 24 & 25 Vict. c. 80, and the acts therein recited, or any of them, so far as the same can be made applicable, and are not varied by the Special Act or this act, shall be taken to extend to this act, and to everything to be done in pursuance of this act, and as if the same were herein repeated and set forth.

3. The power of the Poor-law Board to make orders for loans conferred by the Special Act shall be extended until the 1st January, 1865.

4. Where any local board, or local or other authority, propose to contribute to, purchase, or execute, by means of a loan under the Special Act and this act, any works of sewerage or water supply, the cost whereof, in addition to, and inclusive of, the amount of any advances to such local board, or local or other authority, previously authorised under the Special Act or this act, is estimated to exceed one year's rateable value of the property assessable within the district in respect of which such loan is required, the Poor-law Board may by their order authorise such local board, or local or other authority, to borrow, and the Public Works Loan Commissioners may thereupon lend, for such works, an amount not exceeding, together with the advances previously authorised under the Special Act or this act, two years' rateable value of the property assessable within the district in respect of which such loan is required.

5. Where any local board of health, or local or other authority, shall execute any private improvement works by means of a loan under the Special Act or this act, such local board, or local or other authority, may allow the owner of the premises in respect of which such works shall be undertaken to repay the expenses for which such owner may have become liable, either by virtue of the provisions of the Local Government Act, 1858, or of any local act, by equal annual instalments not exceeding thirty, with interest at not less than the rate of 3*l.* 10*s.* per centum per annum upon the sum from time to time remaining unpaid; and the instalments from time to time due shall, together with interest as aforesaid, be recoverable in like manner in all respects as the expenses for which an owner is made liable for private improvement works under the Local Government Act, 1858, or any local act in force in the place where such works have been executed respectively.

6. The terms used in this act shall be construed in like manner as in the Special act, and sect. 21 of that act shall be construed as having included parishes and townships under separate boards of guardians.

7. The Special Act and this act may be cited and described for all purposes as "The Public Works (Manufacturing Districts) Acts, 1863, 1864."

CAP. CV.

An Act to explain the Statutes of Her present Majesty for amending the Laws relating to the Removal of the Poor.
[20th July, 1864.]

Sect. 1. *Residence in the parish of a settlement not to be excluded in the computation of period of residence.*

2. *Not to apply to orders of removal executed.*

3. *Construction of act.*

Whereas it is enacted in the 1st section of the stat. 25 Vict. c. 55, that after the 25th March then next the period of three years should be substituted for that of five years specified in the 1st section of the stat. 9 & 10 Vict. c. 66, and

that the residence of a person in any part of a union should have the same effect in reference to the provisions of the said section as a residence in any parish: and whereas doubts exist as to the proper meaning of this latter provision, and it is desirable to remove the same: be it therefore declared and enacted, &c.

Sect. 1. That in the case of any poor person heretofore chargeable or hereafter becoming chargeable in any parish comprised in a union not being the parish of his settlement, the period of time during which he shall have resided in the parish of the settlement, if in the same union, shall not be excluded in the computation of the time of residence required to render him exempt from removal under the statutes above referred to.

2. Nothing herein contained shall apply to any order of removal made and executed before the passing of this act.

3. The words of this act shall be construed in the same manner as the said first-mentioned act.

CAP. CVI.

An Act to authorise the Lords Commissioners of the Treasury to make Provision in regard to the Salaries of certain Sheriffs Substitute in Scotland.
[20th July, 1864.]

CAP. CVII.

An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863.
[20th July, 1864.]

CAP. CVIII.

An Act to amend the West Indian Incumbered Estates Acts.
[20th July, 1864.]

Sect. 1. *Short title.*

2. *Definition of principal act, &c.*

3. *Provision as to acts coming into operation.*

4. *Power to include stock in sales.*

5. *Power to appoint receiver of lands and stock after conditional order for sale.*

CAP. CIX.

An Act for providing a further Sum towards defraying the Expenses of constructing Fortifications for the Protection of the Royal Arsenals and Dockyards, and the Ports of Dover and Portland, and of creating a Central Arsenal.
[20th July, 1864.]

CAP. CX.

An Act for the Amendment of the Law relating to the Mitigation of Penalties.
[20th July, 1864.]

Sect. 1. *Justices prohibited from mitigating penalties under general powers of local act.*

2. *Short title.*

Whereas, by various public acts of Parliament, penalties are imposed in respect of certain offences, and it is provided that such penalties are not to be reduced below the limits in such acts specified: and whereas the provisions of the said public acts are contravened by special enactments introduced into certain local acts, empowering the justices or court having cognisance of offences in certain localities to mitigate all penalties in respect of such offences: and whereas it is expedient to prevent such contravention as aforesaid of the general law: be it enacted &c., as follows:—

Sect. 1. Where any public act of Parliament provides, that in respect of any offence therein mentioned a penalty is to be imposed of not less than a particular sum of money, or of not less than a certain term of imprisonment or other punishment therein specified, it shall not be lawful for the justices or court having cognisance of such offence to mitigate such penalty below the limit specified in that act of Parliament, in pursuance of any power of mitigating penalties conferred on such justices or court by any local or private act of Parliament.

2. This act may be cited for all purposes as "The Limited Penalties Act, 1864."

CAP. CXI.

An Act to transfer certain Houses in and near Cranbourne-street, in the City of Westminster, from the Commissioners of Her Majesty's Works to Her Majesty, for the Considerations therein mentioned. [29th July, 1864.]

CAP. CXII.

An Act to amend the Law relating to future Judgments, Statutes, and Recognisances. [29th July, 1864.]

- Sect. 1. *Future judgments, &c. not to affect land until land delivered in execution.*
 2. *Interpretation of terms.*
 3. *Writs of execution to be registered in manner prescribed by the 23 & 24 Vict. c. 38.*
 4. *Creditor to whom land delivered in execution entitled to obtain summary order from Court of Chancery for sale.*
 5. *Where there are other creditors, notice of sale to be served upon them.*
 6. *Parties claiming interest through debtor bound by order for sale.*
 7. *Extent of act.*

Whereas it is desirable to assimilate the law affecting freehold, copyhold, and leasehold estates to that affecting purely personal estates in respect of future judgments, statutes, and recognisances: therefore be it enacted &c., as follows:—

Sect. 1. No judgment, statute, or recognisance to be entered up after the passing of this act shall affect any land (of whatever tenure) until such land shall have been actually delivered in execution by virtue of a writ of elegit or other lawful authority, in pursuance of such judgment, statute, or recognisance.

2. In the construction of this act the term "judgment" shall be taken to include registered decrees, orders of courts of equity and bankruptcy, and other orders having the operation of a judgment; and the term "land" shall be taken to include all hereditaments, corporeal or incorporeal, or any interest therein; and the term "debtor" shall be taken to include husbands of married women, assignees of bankrupts, committees of lunatics, and the heirs or devisees of deceased persons.

3. Every writ or other process of execution of any such judgment, statute, or recognisance, by virtue whereof any land shall have been actually delivered in execution, shall be registered in the manner provided by an act passed in the session of the 23 & 24 Vict. [c. 38], intituled "An Act to further amend the Law of Property," but in the name of the debtor against whom such writ or process is issued, instead of, as under the said act, in the name of the creditor; and no other or prior registration of such judgment, statute, or recognisance shall be or be deemed necessary for any purpose; and no reference to any such prior registration shall be required to be made in or by the memorandum or minute of such writ or other process of execution which shall be left with the senior master of the Court of Common Pleas for the purpose of such registry.

4. Every creditor to whom any land of his debtor shall have been actually delivered in execution by virtue of any such judgment, statute, or recognisance, and whose writ or other process of execution shall be duly registered, shall be entitled forthwith, or at any time afterwards while the registry of such writ or process shall continue in force, to obtain from the Court of Chancery, upon petition in a summary way, an order for the sale of his debtor's interest in such land, and every such petition may be served upon the debtor only; and thereupon the court shall direct all such inquiries to be made as to the nature and particulars of the debtor's interest in such land, and his title thereto, as shall appear to be necessary or proper; and in making such inquiries, and generally in carrying into effect such order for sale, the practice of the said court with respect to sales of real estates of deceased persons for the payment of debts shall be adopted and followed, so far as the same may be found conveniently applicable.

5. If it shall appear on making such inquiries that any other debt due on any judgment, statute, or recognisance is a charge on such land, the creditor entitled to the benefit of such charge (whether prior or subsequent to the charge of the petitioner) shall be served with notice of the said order for sale, and shall after such service be bound thereby, and shall

be at liberty to attend the proceedings under the same, and to have the benefit thereof; and the proceeds of such sale shall be distributed among the persons who may be found entitled thereto, according to their respective priorities.

6. Every person claiming any interest in such land through or under the debtor, by any means subsequent to the delivery of such land in execution as aforesaid, shall be bound by every such order for sale, and by all the proceedings consequent thereon.

7. This act shall not extend to Ireland.

CAP. CXIII.

An Act to amend the Laws relating to the Conservancy of the River Thames; and for other Purposes relating thereto. [29th July, 1864.]

CAP. CXIV.

The Improvement of Land Act, 1864. [29th July, 1864.]

- Sect. 1. *Recited act, 12 & 13 Vict. c. 100, repealed.*
Commissioners, Landowners, &c.
 2. *Interpretation of "the commissioners."*
 3. *Provisions of the 9 & 10 Vict. c. 101, &c., to extend and be applicable to proceedings of commissioners.*
 4. *Assistant commissioners may take declarations and examine witnesses.*
 5. *Punishment of persons giving false evidence.*
 6. *As to service of notices on commissioners.*
 7. *As to the services of notices on other persons.*
 8. *Interpretation of "landowner."*
 9. *Interpretation of "improvement of land."*
 10. *Interpretation of "person."*

Proceedings preliminary to Sanction of Improvements.

11. *Application to commissioners to sanction improvements.*
 12. *Joint application by several landowners.*
 13. *Commissioners may issue forms;*
 14. *Require security for expenses;*
 15. *Cause application to be investigated;*
 16. *And require proposed improvements to be modified.*
 17. *Advertisements and notices preliminary to sanction.*
 18. *Power of dissent by persons interested, and protection of landowner's infant children.*
 19. *The same in case of navigable rivers and canals.*
 20. *Consents necessary in case of church lands.*
 21. *In case of dissent, or when landowner's infant children are to be protected, Court of Chancery or Session may authorise commissioners to proceed.*
 22. *Service of notice under preceding clause.*
 23. *And costs may be given by the court.*
 24. *Representation of persons under disability for applications and dissents under preceding clauses.*

Sanction of Improvements, and Rights thereunder.

25. *Commissioners' order sanctioning improvements.*
 26. *Forms of orders sanctioning improvements to be prepared by commissioners; what they must contain.*
 27. *They may be called provisional orders, and may be assigned to parties agreeing to execute improvements.*
 28. *Provision for death of landowner pending completion of improvements.*
 29. *Provisional orders may be modified.*

Execution of Improvements.

30. *Detailed specifications to be delivered in advance;*
 31. *And approved before execution of works.*
 32. *Adjoining lands, or easements over them, may be sold for purpose of improvements, and conveniences over adjoining lands for the execution of improvements contracted for.*
 33. *Works necessary to be made on adjoining lands for execution of improvements may be made under certain acts.*
 34. *Provisional order to protect from impeachment of waste, and to authorise getting materials from land, &c.*
 35. *Saving rights of the Crown.*

36. *Saving rights of the Commissioners of her Majesty's Works, &c.*
37. *Saving rights of Duchy of Cornwall.*
38. *Saving rights of Duchy of Lancaster.*
39. *Saving rights of the Admiralty, and of the Board of Trade.*
40. *Plans to be deposited with Admiralty before commencing works below high-water mark.*
41. *Landowner to pay expenses of survey ordered by Admiralty.*
42. *Saving rights of her Majesty's Principal Secretary of State for War.*
43. *Rights of commissioners of sewers saved.*
44. *Works connected with Thames to be executed under direction of Conservators of Thames.*
45. *Metropolitan Board of Works, &c. protected.*
46. *Water companies and commissioners protected.*
47. *Rivers, canals, &c. protected.*
48. *Commissioners may inspect works.*

Charges for Improvements.

40. *Commissioners to execute charge on completion of works, or of some part thereof.*
50. *Expenses of application, and certain contracts, may be included in charge.*
51. *The charges to be by way of rent-charge created by absolute order;*
52. *And may be made according to form in Schedule (B).*
53. *Expenditure made under this act may be charged under acts of improvement companies.*
54. *Improvement companies may exercise the powers of this act, on conforming to its procedure. As also companies authorised to execute improvements in the United Kingdom.*
55. *Absolute order to be conclusive evidence of charge.*
56. *Registry of rent-charges in Ireland, Middlesex, Yorkshire, and Scotland.*
57. *Landowner may borrow the amount of certain public assessments, and charge same on inheritance;*
58. *In form specified, together with costs of application.*
59. *Grantee to have charge for principal money from time to time unpaid, with priority over other incumbrances.*
60. *Charges to be personal property, but money authorised to be invested on real security may be invested therein, or on mortgages thereof.*
61. *Charges not to preclude trustees from investing in purchase or on mortgage of lands.*
62. *Proprietor of Scotch entailed estate may avail himself of act, and rent-charge to be charge on such estate.*
63. *Rent-charges to be recoverable as tithes rent-charges or feu duties.*
64. *Interest on arrears of rent-charges.*
65. *Assignment of charges.*
66. *Tenants for life to keep down rent-charges.*
67. *Tenant may deduct rent-charge, unless he has agreed to pay it.*
68. *Rent-charges may be apportioned, or part of the land charged released therefrom.*
69. *Form, registry, and effect of orders of apportionment and release.*
70. *Charges apportioned, or from which part of the lands have been released, to be deemed original charges.*
71. *Several charges may be dealt with in one order of apportionment or release.*

Upholding Improvements.

72. *Improvements to be upheld, and condition thereof certified if required.*
73. *Power to enter on neighbouring lands for repair of works, making compensation.*
74. *Farmhouses, &c. to be insured; power to insure in case of default.*
75. *Inclosure Commissioners may compel maintenance of improvements.*
76. *Inclosure Commissioners may give relief from maintenance of improvements.*

77. *Admiralty may remove works abandoned or fallen into decay.*

Subscription to Railways.

78. *Conditions for application to commissioners.*
79. *Commissioners proceedings on application.*
80. *Provisional order sanctioning charge.*
81. *Companies empowered to lend.*
82. *Commissioners absolute order and its conditions.*
83. *Form and effect of absolute order.*
84. *Notice thereof to be entered in register of shareholders.*
85. *Person liable to pay charge to be entitled for the time being to the shares,*
86. *And to have them stand in his own name.*
87. *Rights and duties of persons registered for the time being in respect of the shares.*
88. *Entire shares to belong to parties in proportion to their payments, and to be released to them from time to time.*
89. *Shares not claimed within two years from expiration of term to belong to person bound to make last payment of charge.*
90. *Inclosure Commissioners to cause a table of fees to be prepared, and submitted to the Treasury for approval.*
91. *Officers to render account of fees received to the Treasury. To be paid over to the Consolidated Fund.*

Whereas an act was passed in the 12 & 13 Vict. [c. 100], intituled "An Act to promote the Advance of private Money for Drainage of Lands in Great Britain and Ireland," and several companies have been incorporated by act of Parliament, with special powers for promoting the improvement of land in Great Britain and Ireland by drainage and otherwise; and it is desirable to amend and consolidate the law relating to the improvement of land by owners of limited interests, and to enable such owners to charge their lands with money subscribed for the construction of railways and navigable canals which will permanently increase the value of such lands: be it enacted &c., as follows:—

1. The act first above mentioned, being the Private Money Drainage Act, 1849, is hereby repealed, except so far as relates to any proceedings on applications pending under the said act at the date of the passing hereof, it being the intention hereof that all such proceedings shall be worked out under the said act, and that all charges to be made in consequence of any such proceedings shall be made and operate under the said act, which shall apply thereto as if this act had never been passed: provided also, that nothing herein contained shall affect any charge made under the said act before the passing hereof, or any right or obligation existing or which may arise in respect of any such charge.

And with regard to the commissioners for the execution of this act, and other general matters, be it enacted as follows:—

2. By "the commissioners" shall herein be meant, as regards lands in Great Britain, the Inclosure Commissioners for England and Wales, and as regards lands in Ireland, the Commissioners of Public Works in Ireland under an act of the 1 & 2 Will. 4 [c. 33], intituled "An Act for the Extension and Promotion of Public Works in Ireland," and an act of the 5 & 6 Vict. [c. 89], intituled "An Act to promote Drainage of Lands, and Improvement of Navigation and Water Power in connexion with Drainage, in Ireland," and the several acts amending the same respectively.

3. All the provisions of the act of the 9 & 10 Vict. [c. 101], intituled "An Act to authorise the Advance of Public Money to a limited amount to promote the Improvement of Land in Great Britain and Ireland by Works of Drainage," and of any and every other act for the time being in force relating to any of the aforesaid commissioners, so far as the same may concern or be auxiliary to the proceedings or inquiries of the commissioners under the authority of such acts or any of them, or the authentication of instruments, shall, except as in this act otherwise provided, extend and be applicable to their proceedings and inquiries, and the authentication of instruments, under this act.

4. Every assistant commissioner or inspector acting in any matter, inquiry, or proceeding by the authority and in the

execution of this act may receive declarations and statements, and examine upon declaration all such persons as may voluntarily attend before him in such matter, inquiry, or proceeding.

5. If any person shall wilfully give false evidence in any matter, inquiry, or proceeding under the provisions of this act, or shall make or subscribe a false statement or declaration for the purposes of this act, such person shall, in England or Ireland, be deemed guilty of a misdemeanour, and in Scotland of a crime and offence, and shall be punished accordingly.

6. Any notice requiring to be served upon the commissioners may be served by the same being left at or transmitted through the post, directed to their office in London.

7. In all cases in which it shall be necessary under the provisions of this act to serve any notice upon any other person, it shall be sufficient to send such notice in a registered post letter, directed to such person at his then or last known place of residence or of business, unless the letter containing such notice shall be returned from the post-office as undelivered; and if such person shall not have any place of residence or of business within Great Britain or Ireland, or if the place of business or of residence of such person cannot with due diligence be ascertained, then such notice may be served upon such other person as his representative, or be given in such other manner as the commissioners shall in such case direct or approve.

8. The word "landowner" shall mean herein, as to lands in England, the person who shall be in the actual possession or receipt of the rents or profits of any land, whether of freehold, copyhold, customary, or other tenure, except where such person shall be tenant for life or lives holding under a lease for life or lives not renewable, or shall be a tenant for years holding under a lease or an agreement for a lease for a term of years not renewable, whereof less than twenty-five years shall be unexpired at the time of making any application to the commissioners, without regard to the real amount of the interest of any person so excepted; and in the case where the person in the actual possession or receipt of the rents or profits of any land shall fall within the above exceptions, then the person who for the time being shall be in the actual receipt of the rent payable by the person so excepted, unless he shall also fall within the above exceptions, shall, jointly with the person who shall be liable to the payment thereof, be deemed for the purposes of this act to be the owner of such lands; and as to lands in Scotland, the word "landowner" shall denote and include every far, liferenter, or heir of entail who shall be in the actual possession of the land, or in receipt of the rents payable on the tacks, leases, or tenancies of the tenants in the actual possession thereof; and as to lands in Ireland, the word "landowner" shall mean such person as under the act passed in the 1 & 2 Vict. [c. 109], intitled "An Act to abolish Compositions for Tithes in Ireland, and to substitute Rent-charges in lieu thereof," shall have the first estate of inheritance, or other estate or interest equivalent to a perpetual estate or interest therein, and also any tenant in dower or by the curtesy, or any person having under the limitations of any settlement by deed, will, act of Parliament or otherwise, any estate for life, or other particular estate thereby created or limited out of or in any estate of inheritance, or by, out of, or in any such estate or interest as by or under the last-mentioned act is to be deemed equivalent to a perpetual estate or interest; and as to lands in any part of the United Kingdom, the word "landowner" shall include a corporation, and also such persons as are empowered by the 23rd section hereof.

9. By "the improvement of land" shall herein be meant all or any of the following matters:—

- (1). The drainage of land, and the straitening, widening, deepening, or otherwise improving the drains, streams, and watercourses of any land:
- (2). The irrigation and warping of land:
- (3). The embanking and weiring of land from the sea or tidal waters, or from lakes, rivers, or streams, in a permanent manner:
- (4). The inclosing of lands, and the straitening of fences and redivision of fields:
- (5). The reclamation of land, including all operations necessary thereto:
- (6). The making of permanent farm roads and permanent tramways and railways and navigable canals for all

purposes connected with the improvement of the estate:

- (7). The clearing of land:
 - (8). The erection of labourers' cottages, farmhouses, and other buildings required for farm purposes, and the improvement of and addition to labourers' cottages, farmhouses, and other buildings for farm purposes already erected, so as such improvement or additions be of a permanent nature:
 - (9). Planting for shelter:
 - (10). The constructing or erecting of any engine-houses, waterwheels, saw and other mills, kilns, shafts, wells, ponds, tanks, reservoirs, dams, leads, pipes, conduits, watercourses, bridges, weirs, sluices, flood-gates, or hatches, which will increase the value of any lands for agricultural purposes:
 - (11). The construction or improvement of jetties or landing places on the sea coast, or on the banks of navigable rivers or lakes, for the transport of cattle, sheep, and other agricultural stock and produce, and of lime, manure, and other articles and things for agricultural purposes; provided that the commissioners shall be satisfied that such works will add to the permanent value of the lands to be charged to an extent equal to the expense thereof:
 - (12). The execution of all such works as in the judgment of the commissioners may be necessary for carrying into effect any matter hereinbefore mentioned, or for deriving the full benefit thereof.
10. The word "person" shall in this act include companies and all other corporations.

And with regard to the proceedings preliminary to the sanction of any improvements, be it enacted as follows:—

11. When any landowner shall be desirous of borrowing or advancing money under this act for the improvement of his land, he shall make an application to the commissioners to sanction the proposed improvements in such manner and form, and stating such particulars as the commissioners shall from time to time direct; and until the proposed improvements shall have been sanctioned by the commissioners in manner hereinbefore mentioned, the application may be withdrawn or altered, or consolidated with any other application, at the pleasure of the applicant, but without prejudice to his liability, as hereinafter mentioned, for the expenses incurred by the commissioners or their officers in consequence of his application.

12. Any two or more landowners may, with the consent of the commissioners, join in an application to them to sanction the improvement of the lands of such landowners respectively, but the sum to be charged in pursuance of any such joint application shall be apportioned so that a separate and distinct sum may become charged on the land of each landowner.

13. The commissioners may from time to time frame and circulate, as they shall see occasion, forms indicating the particulars of the information to be furnished to them by landowners for the purposes of this act, and such other forms as the commissioners may deem expedient for facilitating any proceedings under this act.

14. The commissioners may require security to be given to them by the landowner, by bond, deposit, or otherwise, in such form as they may think fit, for the payment to them of the expenses which they or their officers shall incur in respect of the investigation on any application, and, if they shall issue such provisional or other sanctioning order as hereinafter mentioned, of the expenses which they or their officers shall incur in inspecting and ascertaining the due execution of the works; but unless the commissioners shall issue such absolute order as hereinafter mentioned, such payment shall not be a charge on the land to which such application relates, but shall be a debt due by the person making such application to the commissioners, and shall be recoverable by them as in the nature of a Crown debt.

15. If the commissioners shall think fit to entertain the application so made to them, they may cause the land to be inspected and examined by an assistant commissioner, or an engineer or surveyor, who shall have regard to and examine the proposals and statements contained in such application, and shall report his opinion thereon, and who shall also report whether in his judgment the proposed improvements

will effect a permanent increase of the yearly value of the land exceeding the yearly amount proposed to be charged thereon in respect of the improvements applied for; and the commissioners may by themselves, or any assistant commissioner, engineer, or surveyor, make such other inquiries in relation to any such application as they shall think fit: provided that the above requisition as to increased annual value shall not apply to any outlay proposed to be made upon, or in respect of, planting only.

16. The commissioners shall have power to require such alterations as they shall think expedient to be made in the improvements proposed, or in the proposed mode of executing them.

17. Before the commissioners shall sanction any improvements, notice shall be given of the application as well by advertisement inserted, in two successive weeks, in some newspaper published in the county in which the land to be improved lies; or in case there shall be no such newspaper published in such county, then in some county adjoining thereto, as by a notice in writing given, where such lands are situate in England or Ireland, to every person entitled to any estate in land, or any part thereof, in reversion or remainder, up to, and inclusive of, the person entitled to the first vested estate of inheritance therein, and to every person entitled to any mortgage upon such land, or any part thereof, who by reasonable inquiry shall be known to be so interested, and given, where such lands are situate in Scotland, to the nearest heir or heirs of entail, not exceeding three, and to the holders of every heritable security on such lands appearing upon the records; and in such advertisements and notices respectively shall be stated the maximum amount which it is proposed to charge in respect of the improvements, and the greatest and least terms over which it is proposed that the rent-charge should be spread; and the commissioners shall not sanction the improvements until one month shall have elapsed from the publication of the second of such advertisements and the service of such notices (if any) respectively, of which publication, and of the service of all necessary notices as aforesaid, the landowner, shall, if required by the commissioners, satisfy them by one or more statutory declarations made by him or on his behalf.

18. In case any person having any estate in or charge or security on the land to be improved shall within the month named in the last preceding section signify in writing to the commissioners his dissent from such application, stating therein the nature of his estate in or charge or security on such land, the commissioners shall certify such dissent to the landowner by whom the application was made, and shall not make any provisional or other order sanctioning the improvements unless or until such dissent be withdrawn, or an order be made by the High Court of Chancery in England or Ireland respectively, or by the Court of Session in Scotland, in manner hereinafter provided, authorising the commissioners to sanction the same; nor shall they make any provisional or other order sanctioning the improvement of any land in the case of which the landowner, or the husband of the landowner, shall be the father of the person or persons entitled either at law or in equity to any estate in such land, or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance, and such person or persons, or any of them, shall be an infant or infants, or a minor or minors, unless or until such an order as hereinbefore mentioned shall be made by such court as aforesaid.

19. If the commissioners shall consider that any proposed improvement would interfere with any navigable river or canal respectively vested in or under the management or control of any commissioners, trustees, conservators, undertakers, company, or other body or individuals, or the banks or other works or conveniences thereof, or would occasion the flow or discharge into such river or canal of any drainage or other matter, the landowner shall give notice of the application in writing, together with a plan and section of the proposed improvement, to such commissioners, trustees, conservators, undertakers, company or other body, or individuals; and in case they shall, within one month after the receipt of such notice, signify in writing to the commissioners their dissent from such application, and state the nature of their interest in or authority over such river or canal, the commissioners shall certify such dissent to the landowner by whom the application was made, and shall not sanction the

improvement unless or until such dissent be withdrawn, or an order be made by the High Court of Chancery in England or Ireland respectively, or by the Court of Session in Scotland, in manner hereinafter provided, authorising the commissioners to sanction the improvement.

20. When the land to which the application relates, or any part of such land, is held in right of any church, chapel, or other ecclesiastical benefice, the commissioners shall not sanction any improvement of such land, or of so much thereof as is so held, unless and until the patron of the benefice, and in England and Ireland the bishop of the diocese, and in Scotland the Presbytery of the bounds, shall signify to the commissioners, by writing under their hands, their respective consents to such application.

21. If and when any dissent from any such application to the commissioners for their sanction of proposed improvements shall have been notified in writing to the commissioners, either by a party interested in the lands proposed to be improved (not being lands held in right of any church, chapel, or other ecclesiastical benefice), or by the commissioners, trustees, company, or other body or individuals interested in any river or canal which would or might be interfered with as hereinbefore mentioned, or if the landowner, or the husband of the landowner, shall be the father of the person or persons entitled either at law or in equity to any estate in the land to be improved, or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance, and such person or persons, or any of them, shall be an infant or infants, or a minor or minors, the landowner desiring such improvements may apply to the High Court of Chancery in England or Ireland where such lands are situate in England or Ireland respectively, or to the Court of Session where such lands are situate in Scotland, for an order of such court authorising the commissioners to entertain and proceed upon the application for such proposed improvements notwithstanding such dissent or circumstance; and such application shall be made, as to lands in England, to the Master of the Rolls or any one of the Vice-Chancellors sitting at chambers, by summons, calling on the party dissenting to shew cause why such order should not be made; as to lands in Ireland, to the Master of the Rolls, by summary petition or otherwise, as he shall by any general order direct; and as to lands in Scotland, to either division of the Court of Session in time of session, or to the Lord Ordinary sitting on bills in time of vacation, by summary petition; and the court or single judge, as the case may be, to whom such application shall be made, shall hear and determine such application, and for that purpose shall have power to make or direct to be made all such inquiries, and receive and entertain all such statements and evidence, on oath or by affidavit, as such court or judge may consider necessary or desirable, or as may be produced before them or him; and if upon a consideration of all the circumstances such court or judge shall be of opinion that the commissioners should entertain and proceed upon such application, an order shall be made authorising and requiring them to proceed thereon, and to deal with the same according to the provisions of this act authorising them in that behalf, notwithstanding such dissent or circumstance as aforesaid: provided, that if at any time after notification of such dissent, and before any such order shall have been applied for and made as aforesaid, such dissent shall be withdrawn by a like notification in writing, it shall not be necessary to make or proceed with such application, or to obtain such order.

22. Where any party dissenting shall be out of the jurisdiction of the court, it shall be lawful for the court or judge to order service to be made in such manner as such court or judge may think fit, and upon proof, to the satisfaction of such court or judge, that such party has had actual notice within a reasonable time of such intended application, it shall be lawful for such court or judge thereupon to hear and determine such application.

23. The costs of and incidental to every application under the 21st and 22nd sections, and the mode in which such costs shall be settled or taxed, shall be in the discretion of the court or judge who shall hear such application, and if such court or judge shall so direct, the said costs shall be deemed to be part of the expenses of, and incidental to, the application for the proposed improvements.

24. All husbands, guardians, tutors, committees, curators,

feoffees, trustees, judicial factors, executors, and administrators shall respectively have the same rights and powers of making applications and signifying dissents, and taking other proceedings under this act, as their respective wives, infants, minors, lunatics, idiots, and furious or fatuous persons would have had if free from disability, or as such feoffees, trustees, judicial factors, executors, or administrators respectively would have had if the estates, charges, or interests of which they shall be such feoffees, trustees, or judicial factors, or which shall be vested in them as such executors or administrators, had been vested in them in their own right; but no guardian, tutor, committee, curator, feoffee, trustee, judicial factor, executor, or administrator, shall be in anywise compelled or obliged to signify a dissent from any application under this act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof.

And with regard to the sanction of any improvements, and the rights arising thereunder, be it enacted as follows:—

25. If the commissioners shall find that the proposed improvements, or any part thereof, whether with or without any alterations by them required or sanctioned, would effect a permanent increase of the yearly value of the lands proposed to be improved, or of any part thereof, exceeding the yearly amount proposed to be charged thereon, they shall sanction such improvements, or such part thereof as they shall think expedient, if under the preceding sections it shall be lawful for them so to do, by an order under their hands and seal; and they shall, by the same order, fix the rate of interest to be allowed on the cost of the sanctioned improvements, having regard to the market value of money at the time; but such interest shall never exceed 5l. per cent. per annum.

26. The commissioners shall from time to time prepare forms of orders for sanctioning improvements, and shall also, whenever required by the landowner so to do, frame and entitle their said orders under this act in such manner that they may also be and operate as provisional, sanctioning, or other corresponding orders under the respective acts applying to any company with which he may have contracted relating to the loan or improvements in question: provided, that every order operating under this act to sanction any improvements shall name the landowner to whom it is issued; shall express the greatest sum to be charged, in addition to any costs, charges, and expenses, under the 50th section hereof, and the rate of interest and term of years for the repayment thereof, the former not exceeding 5l. per cent. per annum, and the latter not exceeding twenty-five years; shall specify the lands on which such repayment is to be charged; and shall either express or refer to some contract or other document expressing the general scheme of the improvements to be executed.

27. Every order operating under this act alone to sanction any improvement may be in the form set forth in Schedule (A.) hereto, and shall be called a provisional order, and shall, subject to the following section hereof, create in favour of the landlord named therein the title to an absolute charge, on the completion of the sanctioned improvements, which title such landowner may assign, either absolutely or by way of security, to any person; and such assignment may be made by indorsement on the provisional order.

28. In case of the death of any landowner, or the determination of his interest, between the date of the provisional order and the completion of the improvements sanctioned thereby, the right to complete such improvements, and to assign the title to an absolute charge, shall pass to the succeeding landowner; but if the succeeding landowner shall not, within three calendar months after his succession, proceed with the works, so as to complete the same in conformity with the provisional order, the preceding landowner, or, in case of his decease, his executors or administrators, may complete such improvements, and shall become entitled to have the absolute charge executed to him or them. If the succeeding landowner shall complete the improvements, there shall be distinct absolute charges executed to such landowner, and the preceding landowner, or his personal representatives, for the outlay made by the preceding and succeeding landowners respectively, and in case of difference, the commissioners shall determine the proportions; provided that the succeeding landowner may, with the sanction of the Inclosure Commissioners, and after notice to the parties to whom no-

tice was originally given, or such of them as may be living, and such other persons, if any, as the commissioners may direct, terminate the proceedings under the provisional order, on payment of the outlay and expenses made thereunder, and indemnifying the person to whom the title to the absolute charge may have been assigned. Notwithstanding the foregoing provisions, if the title to an absolute charge shall have been assigned by the preceding landowner, the assignee may complete the improvements, if he shall proceed therewith within one calendar month from the time the preceding landowner ceased to be such landowner.

29. The commissioners may from time to time, on application to be made by the landowner, and after such inquiry as they shall think fit, sanction any modifications or alterations either of the scheme of the improvements, or of any other matter expressed or referred to in the provisional order: provided that no such modification or alteration shall increase the sum to be charged in respect of the improvements, or extend or curtail the term of repayment, beyond the greatest amount which it was proposed so to charge, or the greatest or least term over which it was proposed that the rent-charge should be spread, as respectively stated in the advertisement and notices hereinbefore required: provided also, that every such modification or alteration shall require the consent of every party who, by having contracted for the execution of the improvements, or by having taken an assignment of the title to an absolute charge, or otherwise, may be interested therein; and the modifying order shall be in such form as the commissioners shall from time to time appoint, and shall be construed together with the original order as one order, with respect to all rights arising thereunder after the date of the modifying order.

And with regard to the execution of any improvements, be it enacted as follows:—

30. Before the commencement of any improvements sanctioned in manner aforesaid the landowner shall deliver to the commissioner a detailed specification thereof, and in the case of buildings, and also in any other case where the same shall be required by the commissioners, a detailed plan or drawing: provided, that when it is not intended to complete the improvements within one year from the date of the provisional or other sanctioning order, the specification and plan or drawing first delivered may comprise so much only as it is intended to complete within one year from the said date, so, however, that for the works of each successive year such specification and plan or drawing as aforesaid be always delivered in advance.

31. The specifications and plans or drawings aforesaid shall be examined, and, if necessary, the spot visited, by an assistant commissioner, or an engineer or surveyor, who shall report whether, in his judgment, the improvements as proposed to be effected will be effected in a substantial and durable manner, and, in the case of farm buildings, whether the same, or the improvements thereof, or additions thereto, will be suitable to the locality; and no improvement shall be commenced or proceeded with until the specifications and plans or drawings aforesaid shall have been approved by the commissioners; but nothing herein contained shall render necessary the redelivery, re-examination, or reapproval of any detailed specifications, plans, or drawings which may have been delivered in connexion with the application for the commissioners' sanction to the general scheme of the improvements, and may have been approved in connexion with that sanction.

32. All persons interested in any lands adjoining, or near to, the land improved, or proposed to be improved, and being, as to lands in England or Ireland, by the provisions of the Lands Clauses Consolidation Act, 1845, and as to lands in Scotland, by the provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, enabled to sell and dispose of such lands so adjoining or near, or any estate or interest therein, may, for the purpose of any improvements authorised by this act, sell and convey or grant to the landowner whose land has been, or is proposed to be, improved, such lands so adjoining or near, or any part thereof, or any easement, authority, or right in, through, over, or affecting the same, and any such land, easement, authority, or right so sold and conveyed or granted shall thereupon become appurtenant to or pertinent of the lands improved, or proposed so to be, and with reference to the improvements whereof the same was purchased, and shall

be held upon and subject to the same uses, trusts, charges, and incidents; and all such persons as aforesaid may also make any agreement with the landowner, or with any person or company that shall have contracted for the actual execution of the improvements, or their respective agents, with reference to entering on, cutting through or into, or prejudicially affecting such lands so adjoining or near; and every such sale, conveyance, grant, and agreement shall be valid and effectual accordingly, and the price or consideration shall be settled by two surveyors or a surveyor to be appointed by them in manner provided by the 9th section of the Lands Clauses Consolidation Act, 1845, or, as the case may be, by the 9th section of the Lands Clauses Consolidation (Scotland) Act, 1845, and shall be deposited as directed by the same respective sections, and thenceforth become subject to the provisions of the same respective acts.

33. Whenever the commissioners shall think that it may be expedient, in order to obtain or improve an outfall for draining or warping any lands under this act, or otherwise with a view to the improvement of any lands under this act, to enter and execute any works upon any land adjoining or near to the land proposed to be improved, where, by reason of the objection or disability of any owner, lessee, or occupier of such land, such works could not be otherwise executed, proceedings may be taken, if the said lands shall lie in England, either under the provisions of the act of the 10 & 11 Vict. c. 88, intituled "An Act to facilitate the Drainage of Lands in England and Wales," or under those of the third part of the Land Drainage Act, 1861, and, if in Scotland, under the provisions of the act of the 10 & 11 Vict. c. 113, intituled "An Act to facilitate the Drainage of Lands in Scotland," but as though in such act the Inclosure Commissioners for England and Wales had everywhere been named in place of the sheriff; and if such proceedings shall have been taken before the sanction of the improvements in question by the commissioners under this act, the commissioners may, by their order sanctioning such improvements, declare the works in respect of which they shall have been taken to be expedient, and such works shall then be deemed to have been authorised by the commissioners or by the sheriff, as the case may be, and the provisions of the said respective acts shall apply to them accordingly.

34. Every provisional or modifying order shall be a full authority to the landowner or successive landowners and their representatives in the respective cases hereinbefore defined, and to all persons employed by or under contract with him or them respectively, to enter upon the lands to be improved, and any adjoining or neighbouring lands acquired or authorised to be entered under either of the two last preceding sections, and to execute in and on the same, without impeachment of waste by any remainderman or reversioner, all the improvements sanctioned by the same order according to the specifications and plans or drawings approved by the commissioners, and to do, execute, and use all such acts, works, and conveniences as may be proper for making, maintaining, and using such improvements; and for the purpose of effecting any improvement under this or the recited acts, it shall be lawful to get and work freestone, limestone, clay, sand, and any other mineral or substance out of the land to be improved for charged, and to make tramroads and other ways, and to burn and make bricks, tiles, and other things to be used in effecting such improvements, and also for the same purpose to cut down and use any timber or trees not planted or serving for shelter or ornament.

35. Nothing in this act contained shall authorise any person to purchase, take, use, or interfere with, or the commissioners to make any order with respect to any land, soil, or water, or any right in respect thereof, belonging to her Majesty in right of her Crown, without the previous consent in writing of the Commissioners for the time being of her Majesty's Woods, Forests, and Land Revenues, or, if the property should be under the management or control of her Majesty's Commissioners of Works and Public Buildings, without the consent in writing of such last-mentioned commissioners, which consent the said respective commissioners are hereby authorised to give; and nothing in this act contained shall divert, alter, or affect any of the rights, powers, or estates vested in her Majesty in right of her Crown.

36. Nothing in this act contained shall authorise any person to purchase, take, use, or interfere with, or the commissioners to make any order with respect to any land, soil, or

water, or any right in respect thereof, the management or control of which may be vested in the Commissioners of her Majesty's Works and Public Buildings on behalf of or in trust for her Majesty or the public, without the consent in writing of the last-mentioned commissioners, which they are hereby authorised to give.

37. Nothing in this act contained shall authorise any person to take, use, enter upon, or interfere with any land, soil, or water, or any rights in respect thereof, belonging to the Sovereign for the time being in right of the Duchy of Cornwall, without the consent in writing of some two or more of the regular officers of the said duchy, or of such other persons as may be duly authorised under the provisions of the Duchy of Cornwall Management Act, 1863, sect. 39, to exercise all or any of the rights, powers, privileges, and authorities by the said act made exercisable or otherwise for the time being exercisable in relation to the said duchy, or belonging to the Duke of Cornwall for the time being, without the consent of such duke, testified in writing under the seal of the Duchy of Cornwall, first had and obtained for that purpose, or to take away, diminish, alter, prejudice, or affect any property, rights, profits, privileges, powers, or authorities vested in or enjoyed by the Duke of Cornwall for the time being, or in or by the Sovereign for the time being in right of the Duchy of Cornwall.

38. Nothing in this act contained shall authorise any person to purchase, take, use, or interfere with any lands, soil, or water, or any right in respect thereof, belonging to her Majesty, her heirs or successors, in right of the Duchy of Lancaster, without the previous consent in writing of the chancellor of the said Duchy of Lancaster, which consent such chancellor is hereby authorised to give, or to take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities vested in or enjoyed by her Majesty, her heirs or successors, in right of the said Duchy of Lancaster.

39. Nothing in this act contained shall authorise any person to purchase, take, use, or interfere with any land, soil, or water, or any right in respect thereof, or to take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities vested in or enjoyed by the Lord High Admiral, or the Commissioners for the time being for executing the office of Lord High Admiral (hereinafter designated the Admiralty), or vested in or enjoyed by the Lords of the Committee of her Majesty's Privy Council for Trade and Foreign Plantations (hereinafter designated the Board of Trade), without the previous consent of the Admiralty signified in writing under the hand of the secretary of the Admiralty (which consent the Admiralty are hereby authorised to give), or, as the case may be, without the previous consent of the Board of Trade signified in writing under the hand of one of the secretaries of the said board.

40. With respect to any harbour, port, bay, estuary, or navigable river, or part thereof, comprised in any notice from time to time given by the Admiralty under sect. 9 of the Harbours Transfer Act, 1862, previously to commencing any work below high-water mark there shall be deposited at the Admiralty-office plans, specifications, and working drawings thereof for the approval of the Admiralty, such approval to be signified in writing under the hand of the Secretary of the Admiralty, and with respect to all other parts where the tide flows, previously to commencing any work below high-water mark there shall be deposited at the office of the Board of Trade plans, specifications, and working drawings thereof for the approval of the Board of Trade, such approval to be signified in writing under the hand of one of the secretaries of the said board, and any such work shall be constructed only in accordance with such respective approval; and when any such work shall have been commenced or constructed, it shall not be lawful at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like respective consent or approval; and if any such work shall be commenced or completed, or be altered, extended, or constructed, contrary to the provisions of this act, it shall be lawful for the Admiralty or the Board of Trade, as the case may require, to abate, alter, and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the person or company that executed the said work, the amount of which cost and charge shall be a debt due from such person or company to the Crown, and be recoverable accordingly, with costs of suit.

41. If at any time or times it shall be deemed expedient by

the Admiralty or the Board of Trade, as the case may require, to order a local survey and examination of any embankment or work proposed to be constructed under the powers of this act in, over, or affecting any tidal or navigable water or river, or of the intended site thereof, the landowner shall defray the costs of every such local survey and examination, and the amount thereof shall be a debt due to her Majesty from the landowner, and if not paid upon demand may be recovered as a debt due to the Crown, with the costs of suit, or may be recovered, with costs, as a penalty is or may be recoverable from the landowner.

42. Nothing in this act contained shall authorise any person to purchase, take, use, or interfere with any land, soil, or water, or any right in respect thereof, or to take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities, vested in or enjoyed by her Majesty's Principal Secretary of State for the War Department for the time being, without the previous consent of the same Principal Secretary signified in writing under his hand, which consent the said Principal Secretary for the time being is hereby authorised to give.

43. Nothing in this act contained shall take away, lessen, prejudice, or alter any of the rights, privileges, powers, or authorities vested in or to be discharged by any commissioners of sewers appointed by any commission under the Great Seal or under the seal of the Duchy of Lancaster, or in or by any other lawful commission of sewers, or the commissioners appointed under any local or private acts of Parliament for sewers or drainage; nor shall any work be done which in any way interferes with any sewers, drains, or watercourses, under the control of any commissioners of sewers; and no new sewers, drains, watercourses, or works of drainage, shall be made or done under the powers of this act within the district and jurisdiction of any such commissioners, unless the same be previously approved by those commissioners; and all such works shall be carried on and completed under the direction and control of the same commissioners and their officers; and all sewers, drains, watercourses, and works of drainage made under this act, within the district and jurisdiction of any commissioners of sewers, shall be and remain subject in all respects to the jurisdiction of those commissioners; and whenever any works under this act would intersect or interfere with any sewer, drain, or watercourse, under the control of any such commissioners, the person or company executing the same shall, before any such works be made, construct such proper sewers or works of drainage, and also comply with such orders and regulations, as those commissioners shall require or make to guard against injury to the drainage of the district.

44. All works executed under the authority of this act in, or connected with, the river Thames, or the towing-path thereof, within the jurisdiction of the Conservators of the River Thames, shall, in addition to the approval of such works by the Admiralty, so far as hereinbefore made necessary, be executed according to a plan to be approved of by such conservators, and to be deposited at their office; and such works shall be executed and performed to the satisfaction of the engineer for the time being of such conservators; and nothing herein contained shall extend to prejudice or derogate from the estates, rights, interests, liberties, privileges, or franchises of the Conservators of the River Thames, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which, at the time of the passing of this act, the said conservators did or might lawfully claim, use, or exercise.

45. Where any of the intended works to be done under or by virtue of this act shall or may pass over, under, or by the side of, or so as prejudicially to interfere with, any sewer, drain, watercourse, defence, or work under the jurisdiction or control of the Metropolitan Board of Works, or of any vestry or district board constituted under the Metropolitan Local Management Act, 1855, or any sewers or works to be made or executed by any such board or vestry, or shall or may in any way prejudicially affect the sewerage or drainage of the districts under the control of any such board or vestry, the person or company executing such works shall not commence the same until he or they shall have given to the said metropolitan or district board or vestry, as the case may be, fourteen days previous notice in writing of his or their intention to commence them, by leaving such notice at the principal office of such board or vestry, as the case may be, for the time being, with a plan and section shewing the course

and inclination of the intended works, and other necessary particulars relating thereto, and until such board or vestry respectively shall have signified their approval of the same, unless such board or vestry, as the case may be, do not signify their approval, disapproval, or other directions, within fourteen days after service of the said plan, sections, and particulars as aforesaid; and such person or company shall comply with, and conform to, all directions and regulations of the respective board or vestry in the execution of the said works, and shall provide any new, altered, or substituted works, in such manner as such board or vestry may deem necessary for the proper protection of the sewers and works hereinbefore referred to, and for preventing injury or impediment thereto by or by reason of the said intended works, or any part thereof, and shall save harmless the said metropolitan or district board or vestry respectively against all and every expense to be occasioned thereby; and all such works as may be so required shall be done by or under the direction, superintendence, and control of the engineer or other officer or officers of the said metropolitan or district board or vestry, as the case may be, at the costs, charges, and expenses, in all respects, of the landowner; and when any new, altered, or substituted works as aforesaid, or any works of defence connected therewith, shall be completed, under the provisions of this act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said boards and vestry respectively, as any sewers or works now are, or hereafter may be; and nothing in this act shall extend to prejudice, diminish, alter, or take away any of the rights, powers, or authorities vested or to be vested in the said boards and vestries, or any of them, or their successors; but all such rights, powers, and authorities shall be as valid and effectual as if this act had not been passed.

46. Nothing in this act contained shall authorise any person to take, otherwise than by agreement, any land of any waterworks company or waterworks commissioners, or to alter or interfere with any works or property of any such company or commissioners, without their previous consent in writing, or to authorise any person to foul or otherwise injuriously interfere with or affect any stream or supply of water which any waterworks company or waterworks commissioners are authorised to use for the purposes of their undertaking.

47. All works executed under the authority of this act in or connected with any river, canal, or inland navigation, or the banks or towing-paths or works thereof, vested in or under the jurisdiction or management of any corporation, conservators, trustees, commissioners, undertakers, or individuals, or in respect of the navigation whereon or the use whereof any such corporation, conservators, trustees, commissioners, undertakers, or individuals are entitled by virtue of any act of Parliament to the receipt of any tolls or other dues, shall be executed according to a plan to be approved by such corporation, conservators, trustees, commissioners, undertakers, or individuals, and to be deposited at their office, and such works shall be executed, maintained, and performed to the reasonable satisfaction of the engineer for the time being of such corporation, conservators, trustees, commissioners, undertakers, or individuals; and nothing in this act contained shall prejudice or derogate from the estates, powers, rights, interests, liberties, privileges, or franchises of such corporation, conservators, trustees, commissioners, undertakers, or individuals, or prohibit, defeat, alter, or diminish any right, power, authority, or jurisdiction which, at the time of the passing of this act, such corporation, conservators, trustees, commissioners, undertakers, or individuals did or might lawfully claim, use, or exercise.

48. The commissioners shall, if and as they see occasion, cause any improvements in progress under this act to be inspected by a commissioner or assistant commissioner, or an engineer or surveyor, to ascertain the due execution thereof.

And with regard to charges for improvements under this act, be it enacted, as follows:—

49. When the commissioners are satisfied that the improvements sanctioned by them, or some part thereof, have been properly executed, either according to the specifications and plans or drawings approved of by them, or with such deviations therefrom as in their judgment will not diminish the permanent benefit accruing from such improvements to the lands wherein they have been made, they shall execute a charge

under their hands and seal upon the inheritance or fee of the lands comprised in the provisional or other sanctioning order, or some sufficient part thereof, for the sum by the same order expressed to be chargeable in respect of such improvements, if all the said improvements have been completed, or for a proportional part of such sum if a part only of the said improvements have been executed, together, in either case, with the interest by the same order expressed, and with the amount (if any) which shall have been paid in respect of the purchase of adjoining lands, or of any easement, authority, or right in, through, over, or affecting adjoining lands, with interest thereon at the like rate.

50. If the landowner is desirous that the inheritance or fee of the lands improved should be charged with the expenses of and incident to his application to the commissioners, or his contract with any company or person relating to the execution of the improvements, or to the advance of money for their execution, the commissioners may ascertain the amount of the costs, charges, and expenses properly incurred preparatory or in relation to and consequent on such contract, and the application to the commissioners or either of them, and may include in the principal money charged on the inheritance or fee of such lands the amount of such costs, charges, and expenses, and of the settled or taxed costs, if any, which a court or judge shall have ordered as aforesaid to be deemed and taken to be part of the expenses of and incident to the application for improvements, or such part thereof as the commissioners think fit; and the commissioners may also include in such principal money interest at a rate not exceeding 5l. per centum per annum on all payments forming part of the same principal money from the respective dates of such payments to that of the absolute order, but so that no interest shall be allowed on any such payment for more than six years; provided that the total amount of the principal money to be charged on the lands improved under the provisions of this act shall not in any case exceed that to which, in the opinion of the commissioners, the inheritance or fee of the lands improved will be durably benefited by the improvements.

51. Every charge under this act shall be created by way of rent-charge, payable half-yearly, extending over the term of years fixed by the provisional or other sanctioning order, and the first payment thereof to be made six months after the time when the works in respect of which the same was granted were executed to the satisfaction of the commissioners; and the payment for each half year shall be, and be expressed to be, as to part thereof a repayment of a certain amount of principal money, and as to the remainder thereof a payment of interest; and the charge shall be duly stamped for denoting payment of the proper ad valorem stamp duty which would be payable on a mortgage for securing the like amount as the principal money thereby charged, and shall be called an absolute order; and a copy of every such absolute order shall be authenticated by the seal of the commissioners, and shall be kept by them; and such copy, and any copy thereof authenticated by their seal, shall be evidence of the contents and purport of the same absolute order.

52. Charges under this act shall be made according to the form in the Schedule (B.) hereto annexed, or as near thereto as the circumstances of the case will admit.

53. Whenever, by assignment, under the 26th section hereof or otherwise, a company having power to execute or advance money for the improvement of land shall become entitled to the creation of any charge under either the 49th or the 78th section hereof, the commissioners shall, if required, but subject to the provisions hereinbefore contained, create such charge in the form of, and so that it may also operate as, an absolute or other corresponding order under the act or acts applying to such company.

54. Any company authorised by act of Parliament to execute or advance money for the improvement of land, by giving notice to the commissioners of their intention to avail themselves of any of the powers given by this act, shall be held to have adopted the same, and thenceforth all the procedure of such company shall be carried on under and in accordance with this act only; and any such company which shall adopt this act as hereinbefore provided may, with the sanction of three-fourths of the shareholders present at an extraordinary meeting of the company specially convened for the purpose, execute or advance money for the execution of any improvement authorised by this act in any part of the

United Kingdom, although not so authorised by any act or acts relating to the company.

55. The execution of the absolute order by the commissioners shall be conclusive evidence in all courts, and for all purposes, of the validity of the charge thereby expressed to be made, and no inquiry shall be permitted either into the title or estate of the landowner, or into the due performance of anything required to be done by this act, or as to any other matter on which the validity of such charge might but for this enactment have depended.

56. A memorial of every absolute order of the commissioners whereby a rent-charge is created on land in England and Wales, in pursuance of this act, shall be registered at the office of the Land Registry in England, and a memorial of every absolute order of the commissioners whereby a rent-charge is created on land in Ireland, in pursuance of this act, shall be entered in the proper office for the registration of deeds and wills, and such memorials respectively shall express and contain the date of the order, the name and address of the landowner, the particulars of the lands charged, the amount of the rent-charge, and the period during which the same shall be made payable; and the production of the absolute order, sealed with the seal of the commissioners, shall be a sufficient authority to the registrar for the entry of such memorial at the proper registry office; and all grants of rent-charges on lands in Scotland shall be registered in the general or particular register of sasines: provided that every rent-charge to which the present clause applies shall have priority as hereinafter declared, any law or usage to the contrary notwithstanding.

57. Whenever by or under the provisions of any act of Parliament, Royal Charter, or commission under the Great Seal or the Seal of the Duchy of Lancaster any public or general works of drainage or other improvements shall be required or authorised to be executed, and the cost thereof shall be directed or authorised to be assessed or charged upon the inheritance of the lands improved, then any landowner who shall, under such act, charter, or commission, have been assessed, and shall have become liable to pay any sum of money so chargeable for or towards such works and improvements, or any of them, in respect of his land, may apply to the commissioners to sanction the money so assessed being charged upon the land in respect of which such landowner shall have been so assessed; and if the commissioners shall be satisfied that the works or improvements have been executed in accordance with the requirement or authority in such act, charter, or commission contained, they may, after the money shall have been duly paid by such landowner, by an absolute order within the meaning of the 51st section hereof, charge upon the inheritance or fee of the land in respect of which such landowner shall have been so assessed the amount so assessed and paid, or such part of it as the commissioners may be willing to sanction, to be repaid with interest.

58. Such absolute order and charge may be made in any form and for any term permitted by this act, and all the provisions hereof shall apply thereto in the same manner and with the same effect and operation in all respects as if such order and charge had been made in respect of improvements upon the said land executed under the powers of this act; and if the landowner is desirous that the inheritance or fee of the said land should be charged with the costs, charges, and expenses of and incident to the said application and order, or any contract connected therewith, the provisions of the 50th section hereof shall extend and apply to the present case in the same manner as to the costs, charges, and expenses of the application and contracts in the said 50th section mentioned.

59. From the date of the absolute order, the grantee thereof, and his executors, administrators, successors, and assigns, shall have a charge on the lands therein comprised for the principal money from time to time remaining undischarged, by payment of the rent-charge, with interest, at the rates in the several cases hereinbefore respectively expressed, and such charge shall have priority over every other then existing and future charge and incumbrance affecting such lands or estates and interests respectively, whether created under the powers of any act of Parliament or otherwise, except quit rent, crown rents, chief rents, feu duties, ground annuals, and other charges incident to tenure, tithe commutation rent-charges and tithes, charges created or to be created under any act authorising advances of public money for the im-

provement of land, and any charges created under this act, or charges of prior date created under any other existing act of Parliament authorising the charging of lands with the expense of, and incident to, their improvement: provided that in case a part only of the land charged is subject to a mortgage or other incumbrance, the charge created under the authority of this act shall have priority over the mortgage or other incumbrance only to the extent of a due proportion of such charge, when and so soon as the same shall be ascertained under and pursuant to the 66th section of this act.

60. Every charge under this act shall, as regards the holder thereof, be deemed to be personal property, except that any holder of such a charge, who shall desire to extinguish the same by reuniting it to the land charged, shall have power for that purpose to direct by any deed that it shall be reunited to, and merge in, the beneficial interest in the said land, as if it were of the same nature and tenure therewith; but all trustees, directors, and other persons who may be directed or authorised to invest any money on real security, shall (unless the contrary be provided by the instrument directing or authorising such investment) have power, at their discretion, to invest money in such charges, or on mortgages thereof.

61. No charge on land made by any absolute order, by virtue of this act, shall be deemed such an incumbrance as shall preclude a trustee of money, with power to invest the same in the purchase of land or on mortgage, from investing it in a purchase or upon a mortgage of the land so charged, unless the terms of his trust or power expressly provide that the land to be so purchased or taken in mortgage be not subject to any prior charge.

62. No proprietor of an entailed estate in Scotland shall be held to have contravened the conditions of the entail, by reason of his having availed himself of the provisions of this act, and no rent-charge imposed or created on any entailed lands in Scotland, under the authority of this act, shall be made use of as a ground for adjudging, selling, or evicting such lands, or any part thereof, contrary to the provisions and conditions of the entail, but every such rent-charge shall be a good and effectual charge upon and against such entailed lands to every other effect, and upon and against the rents and profits thereof.

63. Every rent-charge on land by virtue of this act may be recovered by the person or company for the time being entitled to the same, as to lands in England or Ireland, by the same means, and with the like powers, and in like manner in all respects, as a rent-charge in lieu of tithes would be recoverable if charged on the same land, under the act of the 7 Will. 4, for the commutation of tithes in England and Wales, or under the act of the 1 & 2 Vict., to abolish compositions for tithes in Ireland, and to substitute rent-charges in lieu thereof, and the several acts passed for amending the same, as the case may be, and as if such rent-charge, by virtue of this act, were a rent-charge in lieu of tithes made payable to such person or company under the said acts respectively; and as to lands in Scotland, by the same means, and in the like manner in all respects, as any feu duties or rent or annual rent or other payment out of the same lands would be recoverable.

64. If any rent-charge payable under this act shall be in arrear, such arrear shall not bear interest for a longer period than six months, but interest at 5l. per cent. per annum in respect of the same, for any period not exceeding six months, may be recovered in the same manner as the sum in arrear: provided that if, at the expiration of six months from the time of any payment falling into arrear, there shall not be upon the land charged a sufficient distress to answer and satisfy the said payment, and interest thereon, for the said period of six months, together with the costs and charges of such distress, then the arrears of such payment shall continue to bear interest at the rate of 5l. per cent. per annum until payment or satisfaction thereof, and such interest may be recovered in the same manner as the sum in arrear.

65. The grantee, or other person for the time being entitled to any rent-charge created under this act, may assign the same by deed duly stamped, and wherein the consideration is truly stated; and such assignment may be according to the form in Schedule (C.) to this act annexed, or to the like effect; and all assignments made in such form, or as near thereto as the circumstances of the case will admit, shall be effectual to vest, both at law and in equity, the charge

thereby assigned, and all the powers, authorities, rights, and remedies of the assignor with reference to such charge, in the assignee, his successors, executors, administrators, and assigns respectively, and notice of such assignment shall be sent to the commissioners at their office in London.

66. Every landowner on whose land a charge shall have been made under this act, and every succeeding tenant for life, tenant in tail, and other person having a limited interest in the land so charged, shall, as between himself and the persons in remainder or reversion, be bound to pay the yearly or other periodical payments of such charge which shall become payable during the continuance of his interest; and in case he be in the actual occupation, or entitled to an apportioned part of the rents and profits of such land up to the time of the termination of his interest, he shall also be bound to pay an apportioned part of the yearly rent, or other periodical payment, of such charge which shall become due next after the termination of his interest, proportional to the time which elapsed between the day for the previous payment and the day of such termination: provided that no person becoming entitled in possession to any estate or interest in the land shall be liable, as between himself and the persons entitled to the rent-charge, to pay any arrears of the charge remaining unpaid at the time of his becoming so entitled in possession beyond the amount of two years' payment of such charge: provided also, that the amount paid by any person in respect of such arrears, and any costs occasioned by non-payment thereof, shall be a debt from the person who in the first instance ought to have paid the same, or from his estate, to the person who paid the same, and shall be recoverable accordingly.

67. If any tenant or occupier at a rent join in the application for an improvement, or by writing under his hand signify to the commissioners, or to an assistant commissioner or engineer, his consent to become charged with the charge, or an apportioned part thereof, as hereinafter mentioned, such tenant or occupier shall, during his tenancy or occupation, be liable to pay the charge, or an apportioned part thereof, as hereinafter mentioned; and in case the charge be made in respect of the improvement, as well of other land as of the land included in such tenancy or occupation, the commissioners may, upon such consent of the tenant or occupier, declare in the absolute order what portion of the whole charge payable in respect of the improvement shall be payable by such tenant or occupier, during his tenancy or occupancy, in respect of the probable improvement of the land included in his tenancy or occupation; but, except as aforesaid, every tenant or occupier who pays such charge shall be entitled to deduct the amount thereof from the rent payable by him to the landowner, and shall be allowed the same in account with him.

68. If at any time land charged under this act, or under any other act authorising the creation of charges by the commissioners, is occupied in separate farms or other holdings, or has become the property of separate owners, or the owner thereof is entitled thereto under separate titles, or for distinct and separate interests, or is desirous to sell or dispose of part of such land, or part only of such land is subject to any mortgage or other incumbrance, or for any other reason it would be desirable that the charge should be apportioned, or a part of the land charged released therefrom, the commissioners may, with the consent of the landowner, or if the land has become the property of separate owners, or a part thereof is subject to any mortgage or incumbrance, then upon the application of any one of such owners, or of such mortgagee or incumbrancer, but in every case with due notice to the grantee or assignee of the charge, or the husband, guardian, tutor, curator, committee, or trustee of such grantee or assignee, if a married woman, infant, lunatic, idiot, or furious or fatuous person, and to such other parties (if any) as the commissioners think right, either release from such charge any part of the land charged therewith, or apportion such charge, so that a separate and distinct charge may become charged on each separate farm or holding, or on the land of each landowner, or on the land held under each separate title, or for each distinct and separate interest, or on the part or each part which the landowner is desirous to sell or dispose of, and the part intended to be retained by him, or on the part subject to such mortgage or other incumbrance, and on the residue, or on any other separate parts of the land, but so that no charge charged under such apportionment shall be

less than 20s. for each half-yearly payment: provided that no lands shall, in consequence of any such apportionment or release, become charged with any greater amount than that to which, in the opinion of the commissioners, they have been durably benefited by the improvements in respect of which such charge was created.

60. Every such apportionment or release shall be made by an order under the hands and seal of the commissioners, and shall be in the form set out in Schedule (D.) or (E.) to this act, as the case may be, or as near thereto as circumstances will permit, and as to lands in England and Wales, or in Ireland or Scotland, shall be registered in the manner mentioned in the 54th section hereof, or as near thereto as circumstances will permit; and a copy of every such order shall be authenticated by the seal of the commissioners, and shall be kept by them; and such copy, or any copy thereof authenticated by their seal, shall be conclusive evidence in all courts and for all purposes of the contents and purport of the same order, and of the validity of the apportionment or release thereby expressed to be made; and such order shall take effect from the date thereof, subject to the continuance of all rights and remedies for the recovery of moneys which before the date thereof may have become payable out of any lands under the charge so apportioned or released.

70. Every charge apportioned or released as aforesaid shall be recoverable out of the lands on which the same is charged by the order of apportionment, or which shall not by the order of release be released therefrom, in the same manner as if the same had been originally charged on such lands respectively, and shall, for all the purposes of this act, or of the act under which the original charge was created, be deemed to be an original charge on such lands by absolute order.

71. Where any lands are charged by more than one absolute order, any order of apportionment or release under the preceding sections hereof may comprise all or any number of the rent-charges existing by virtue of such absolute orders.

And with regard to the upholding improvements under this act, be it enacted as follows:—

72. So long as any land shall continue charged with any charge hereunder, the person for the time being bound to make the periodical payments of such charge shall uphold the improvements and works in respect of which such charge is made, and shall keep clear and open the outfalls and watercourses of all the drains (if any), and shall, if required either by the commissioners or by any person who shall for the time being be interested in such charge under any assignment or mortgage thereof, once in every year certify to the commissioners the state of such improvements and works, and of such outfalls and watercourses (if any); and if such person shall not so keep and uphold such improvements and works, and such outfalls and watercourses (if any), or shall fell, or cause or knowingly permit to be felled, except in proper thinning, any trees planted under the authority of this act as an improvement, he shall be liable to an action on the case, in the nature of an action of waste, for the damage thereby occasioned, at the suit of any person entitled to any estate in remainder or reversion in such lands.

73. Every person for the time being bound to make the periodical payments of any charge may from time to time, by himself, his engineers, surveyors, agents, servants, and workmen, enter upon any lands in, through, or upon which any of the works have been executed, to ascertain the condition of the works, and to maintain and repair the same, nevertheless paying to the person for the time being enabled by this act to sell or grant any easement in such lands, in case the parties differ about the same, such compensation as shall be determined by two justices or the sheriff, as provided by the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation (Scotland) Act, 1845, for settlement by justices and sheriffs respectively of questions of disputed compensation: provided that as to any lands adjoining or near the land improved, to which the provisions of the acts of the 10 & 11 Vict. cc. 38 and 118, and those of the third part of the Land Drainage Act, 1861, are heretofore respectively made applicable, the powers of entry upon such lands for any of the purposes aforesaid shall be subject to and be regulated by the provisions of those acts respectively.

74. When any farm-houses, farm-buildings, or works susceptible of damage by fire shall have been erected, improved,

or added to under this act, then, so long as any land shall continue charged under this act in respect thereof, the person for the time being bound to make the yearly or other periodical payments of such charge shall insure and keep insured against damage by fire all such farm-houses, farm-buildings, and works in an amount equal to the principal amount originally secured by such charge at the least; and such person shall once in every year certify to the commissioners the fact of such insurance, and the particulars thereof, and that the premium and duty for such insurance for the year then current have been duly paid; and if such person shall not insure or keep insured such farm-houses, farm-buildings, and works, or shall not duly certify the matters aforesaid, it shall be lawful for the person entitled to the charge for the time being, with the assent of the commissioners, to insure against damage by fire the said farm-houses, farm-buildings, and works in an amount not exceeding the principal amount originally secured by such charge, and either in the name of the person by whom such default shall have been made, or in the name of the landowner mentioned in the absolute order, and thereafter to keep the same insured during the continuance of the said charge; and the person for the time being bound to make the periodical payments of such charge shall from time to time, on the day on which the next payment shall become due on the said charge, repay to the person for the time being entitled to the said charge any sums so paid by him for premium and duty on such insurance; and in default of such payment, the amount of such premium and duty, with interest thereon at the rate of 5l. per centum per annum from the time of such default, may be recovered by the last-mentioned person by the same means and in the like manner as if the same had been payable as part of the said charge.

75. If it shall be represented to the commissioners that the person for the time being bound to make periodical payments of any charge created under this or any other existing act authorising the advance of money for the improvement of land has neglected to uphold and maintain the improvements in respect of which the charge was executed, or any of them, the commissioners may, upon security being given for such an amount as they may consider necessary to cover any expenses that may be incurred by them, cause an inspection of the works to be made by an assistant commissioner, engineer, or surveyor.

After such inspection, if the commissioners are satisfied that the improvements have not been upheld and maintained, they shall cause notice to be given to the person bound to make the said periodical payments requiring him to execute the works necessary to uphold and maintain the same within three calendar months from the time of giving such notice.

If such works shall not be executed to the satisfaction of the commissioners within such three months, they may cause such works as in their judgment shall be necessary to uphold and maintain such improvements to be executed by a person appointed by them.

The costs thereof, including the expenses of the assistant commissioner, engineer, or surveyor, shall be repaid by the person bound to make the said periodical payments to the person entitled to the charge, on request, and in default thereof the amount so certified may be recovered, with all expenses incidental to the recovery thereof, in the name of the person for the time being entitled to the charge, by the same means and in the like manner as if the same had been payable as part of the said charge.

76. If it shall be represented to the commissioners that it is not expedient or necessary that any works for the cost of which there shall be a subsisting charge, or any part of such works, should be upheld or maintained, the commissioners may, on having deposited with them a sum, to be fixed by them, to cover all expenses, cause the said works to be inspected by an assistant commissioner, engineer, or surveyor.

If after such inspection and notice to the parties who were served with notice of the application to charge the land or their representatives, and such other persons, if any, as the commissioners may direct, the commissioners shall find and certify that it is not expedient or necessary that the works, or any of them, should be upheld or maintained, thereupon the person for the time being bound to make the said periodical payment shall be relieved from all liability in respect of the maintenance of the works referred to in the commissioners' certificate.

77. If any embankment or work constructed under the powers of this act, under, over, through, or across any tidal water or navigable river, or if any portion of any embankment or work which affects or may affect any such water or river, or the access thereto, shall be abandoned, or suffered to fall into disuse or decay, it shall be lawful for the Admiralty or the Board of Trade, as the case may require, to abate and remove the same, or such part or parts thereof as he or they may at any time or times deem fit and proper, to restore the site thereof to its former condition, at the cost and charge of the landowner, the amount of which cost and charge shall be a debt due from the landowner to the Crown, and be recovered accordingly, with costs of suit.

And with regard to charging lands with money subscribed for the construction of railways, be it enacted, as follows:—

78. In case any landowner shall be desirous of subscribing for any shares or stock in the capital, whether original or additional, of a company having power to construct a railway or navigable canal, or any branch or extension railway or navigable canal, or any deviation of a line of railway or a navigable canal already sanctioned, the works for which such subscription is to be made being unfinished, or in any additional capital to be raised for the completion of any such railway, canal, branch, extension, or deviation, the same being upon or near to and which will improve or benefit the lands of such landowner, and who shall be desirous that such amount, or any part thereof, may be charged upon the lands so to be improved, it shall be lawful for him to apply to the commissioners for that purpose within the time limited by the railway or canal company's act or acts for the construction of the works in question.

79. If the commissioners shall think fit to entertain such application, they shall cause all such inquiries to be made, and take all such other steps, as shall seem to them expedient for obtaining information as to the circumstances; and all the provisions of the 13th, 14th, 15th, 17th, 18th, 20th, 21st, 22nd, 23rd, 25th, and 51st sections of this act shall apply to the case as though an improvement were to be made of the lands proposed to be charged.

80. If the commissioners shall be satisfied that the railway or canal, when constructed and open for traffic, will effect a permanent increase of the yearly value of the lands exceeding the yearly amount proposed to be charged thereon, they shall execute and deliver to the landowner a provisional order, under their seal and the hands of two of them, expressing their sanction of the charge proposed; and such order shall be made as near to the form set forth in the Schedule (A.) to this act as the circumstances will permit, and shall, with the right to a charge thereby created, be assignable by indorsement, either absolutely or by way of security, to any company or person that may agree to advance, by paying the same to the railway or canal company, the amount authorised to be charged, and notice of such assignment shall be given to the commissioners, and shall be registered by them.

81. Every company empowered by act of Parliament to lend money for the improvement of land is hereby empowered to advance, by paying the same to the railway or canal company, any money authorised to be charged in manner aforesaid.

82. When the railway or canal shall have been completed and opened throughout for public traffic, and as many shares in the capital of the railway or canal company subscribed for or held as aforesaid by the landowner as shall be equal in nominal amount to the money authorised to be charged shall have been fully paid up, and the certificates for such shares shall have been deposited by the landowner with the commissioners, the commissioners shall, by an absolute order under their hands and seal, execute to the landowner or his assignees a charge upon the inheritance or fee of the lands in question of the amount authorised as aforesaid to be charged, and may, if the landowner shall so desire, include, with the principal money so charged, the costs, charges, and expenses of the application and orders, and of any advance which may have been made to him of the amount authorised to be charged, and such settled or taxed costs and interest as mentioned in the 50th section hereof, subject nevertheless to the proviso in the same section contained.

83. Such absolute order shall be made in the form in the

Schedule (B.) to this act annexed, or as near thereto as the circumstances will permit, and all the provisions of this act relating to absolute orders, whether in respect of the form or effect of such charges or orders or otherwise, except only the provisions for the apportionment and release of such charges, shall apply to absolute orders under the last preceding section as far as the circumstances admit.

84. The landowner shall forthwith give notice to the railway or canal company of the execution of such absolute order, and of the deposit of such certificates with the commissioners, and thereupon the company shall make an entry or memorial in their register of shareholders with respect to such shares of the fact of such absolute order having been executed.

85. From the time of such notice, and during the whole term of the charge created by such absolute order, the person who for the time being shall be bound to make the periodical payments of such charge shall be entitled to the said shares, and if the same shall not at the time being be registered in his name, the person registered as the holder thereof shall, as between himself and the person so entitled, hold them in trust for such last-mentioned person.

86. The person so for the time being entitled may at any time require the person registered as the holder of the said shares, or his representatives, to transfer to him the said shares, and such transfer shall thereupon be made accordingly, but at the expense in all respects of the transferee; and upon the production of such transfer duly stamped, and of a certificate by the commissioners under their hands and seal that the transferee is the person at the time being bound to make the periodical payments of the said charge, the railway or canal company shall register such transfer.

87. With the exception of such transfers as may from time to time be made for the purpose of transferring the shares to the person so for the time being entitled thereto, the said shares shall not under any circumstances be transferred or disposed of by the registered holder, whether he be the person for the time being entitled thereto or not, during the term of the said charge; but during the term of such charge the registered holder for the time being of the said shares shall have all the other rights and powers of a shareholder in the railway or canal company in respect of the said shares; and the railway or canal company shall not be bound to see to the application of any dividend received by such registered holder, but as between himself and the person or persons for the time being entitled to such shares, he shall hold any dividend which may be received by him in trust for the person who, at the time when such dividend became payable, was the person entitled to the said shares.

88. Whenever any person, or those whom he legally represents as their executor or administrator, shall have been bound to make, and shall have made, such and so many periodical payments of the charge as to repay thereby principal money which, in proportion to the whole amount of principal money charged, and the whole number of the said shares, shall correspond to any integral number of shares, with or without a fraction over, it shall be lawful for the commissioners, on the application of such person, made either during the term of the charge, or within two years after its expiration, to certify that fact under their hands and seal, and by the same certificate to appropriate to such person certain specified shares to such integral number, and to deliver to him the corresponding share certificates; and upon the production to the railway or canal company of such certificate by the commissioners and share certificates, it shall be lawful for such person, if he shall not already be the registered holder, to require such shares to be transferred to him, and the railway or canal company shall make an entry or memorial on their register of shareholders of such shares being freed from the provisions of this act, or of the term of the charge having expired, as the case may be; and such shares shall thenceforward be held and transferred in the same manner as any other shares in the same company, but if the term of the charge shall not have expired, the three last preceding sections of this act shall still apply to the residue of the shares to which the same charge shall relate.

89. The shares composing the said residue shall, at the end of two years after the expiration of the term of the charge, belong to the person who shall have been bound to make the last periodical payment of the charge, or to his executors or

administrators, on such payment being made; and the commissioners shall deliver to him or them the corresponding share certificates, and certify the title to the shares under their hands and seal, in accordance with the above provision; and upon the production to the railway or canal company of the share certificates and such certificate by the commissioners, such person as aforesaid, or his executors or administrators, shall have the said shares transferred to him or them, so far as he or they shall not be already the registered holder or holders thereof; and the railway or canal company shall make an entry or memorial on their register of shareholders of the term of the charge having expired, and thenceforward the said shares shall be held and transferred in the same manner as any other shares in the same company.

90. And whereas it is expedient, that a table or tables of fees proper to be taken by the Inclosure Commissioners, in respect of documents issuing out of their office by virtue of the provisions of this act, should be prepared: be it enacted, that it shall and may be lawful for the said Inclosure Commissioners to prepare, or cause to be prepared, a table or tables of fees, specifying what fees are proper to be demanded and taken in the office of the said Inclosure Commissioners in respect of any forms, orders, or documents prepared in or issued from such office, by virtue of the provisions of this act; and such table or tables shall be laid before the Commissioners of her Majesty's Treasury, who shall have power to revise and settle the same, and from time to time to alter or amend the same, as they may deem necessary and proper, and the said table or tables of fees, so revised, settled, altered, or amended, from time to time to approve and allow; and the said Inclosure Commissioners are required, so soon and as often as each table or tables of fees shall have been approved and allowed, to cause the same to be inserted and published in the London Gazette; and from and after such publication, such fees may be legally demanded, and may be received and recovered, by any person appointed by the said Inclosure Commissioners to receive or recover the same.

91. The said Inclosure Commissioners shall cause the fees received by them, under the authority of this act, to be duly and regularly entered in one or more books to be kept for that purpose, distinguishing the fees received under their several heads, and shall render a true and faithful account thereof to the Commissioners of her Majesty's Treasury at such times, and in such form of account, and with such particulars of receipt or otherwise, and accompanied by such vouchers, as the said Commissioners of her Majesty's Treasury shall from time to time require; and the said Inclosure Commissioners shall from time to time, when required so to do by the said Commissioners of her Majesty's Treasury, cause the amount of such fees to be paid into the receipt of the Exchequer, to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

SCHEDULES TO WHICH THE FOREGOING ACT REFERS.

SCHEDULE (A.)

Provisional Order.

(Proper heading).

The Inclosure Commissioners for England and Wales, in pursuance of the Improvement of Land Act, 1864, do, by this order, under their hands and seal, sanction the proposed improvements expressed —, upon the terms and conditions that such improvements be executed in the manner mentioned or specified in the said contract, and at an expense not exceeding the sum of £—, and do hereby declare, and provisionally order, that it is right and proper, and for the benefit of the parties interested in the lands mentioned in the schedule hereto, that the inheritance or fee of such lands should be charged with the said sum of £—, together with the costs, charges, and expenses preparatory or in relation to, and consequent on, the said contract, and the application for this order, and that the same should, to the whole amount of such respective moneys [or, should, to any amount not exceeding £—, as the case may be], be charged in the manner following; that is to say [here express how the amount is to be repaid, with interest.]

In witness whereof they have hereunto affixed their hands and seal, this — day of —, in the year of our Lord 18—.

SCHEDULE OF LANDS PROVISIONALLY CHARGED.

Name, &c. of Lands.	Land-owner.	Occupier.	Parish.	County.	Total Acreage.	Total Rental.

SCHEDULE (B.)

The Improvement of Land Act, 1864.

County of —, parish of —.

No. —.

Absolute Order.

[Here insert the name of landowner], of [here insert address].

Loan of — pounds for the improvement of —, in the parish of —, in the county of —.

The Inclosure Commissioners for England and Wales, in pursuance of the Improvement of Land Act, 1864, do, by this absolute order, under their hands and seal, charge the inheritance or fee of the lands mentioned in the schedule hereto with the payment to —, of the yearly sum of — pounds — shillings and — pence, payable half-yearly on the — day of —, and the — day of —, in every year, for the term of — years, and being a proportionate repayment, according to the table annexed, of the capital sum of — pounds, with interest at £— per cent. per annum, the first half-yearly payment to be made on the — day of —.

Dated this — day of —, 18—.

SCHEDULE OF LANDS CHARGED.

Name, &c. of Lands.	Land-owner.	Occupier.	Parish.	County.	Total Acreage.

TABLE.

Half-yearly Payments.	Proportionate Repayments of the Loan.	Interest at £— per Cent. per Annum.

SCHEDULE (C.)

Assignment of a Charge.

(Proper heading).

I, A. B., &c., in pursuance of the Improvement of Land Act, 1864, hereby, in consideration of [state the consideration], assign to C. D., of &c., his executors, administrators, and assigns, the charge of the sum of £— and interest at the rate of &c. [or the charge of &c., as the case may be], which, by virtue of the absolute order, No. [], executed by the Inclosure Commissioners for England and Wales, and dated &c., is an absolute charge on the inheritance of the lands mentioned in the schedule hereto, and all the powers, authorities, rights, and remedies of —, with reference to such charge. [Here add such clauses and provisions, if any, as are agreed on between the parties.]

As witness, &c., this — day of —. (I. S.)

SCHEDULE OF LANDS CHARGED.

Name, &c. of Lands.	Land-owner.	Occupier.	Parish.	County.

SCHEDULE (D.)

Form of Order for apportioning Charges.

The Improvement of Land Act, 1864.

County of —, parish of —.

Whereas, by an absolute order under this act, dated the

— day of —, and numbered —, the lands mentioned in the first and second schedules hereto were charged with the payment to —, of the yearly sum of —, payable half-yearly for the term of — years:

And whereas, upon application made to them, the Inclosure Commissioners for England and Wales see fit to apportion the said charge:

Now, therefore, the said Inclosure Commissioners, in pursuance of the Improvement of Land Act, 1864, do, by this order under their hands and seal, charge the inheritance or fee of the lands mentioned in the first schedule hereto with the payment to —, of the yearly sum of — pounds — shillings and — pence, payable half-yearly on the — day of — and the — day of — in every year, for the term of — years, being a proportionate repayment, according to the table to the same schedule annexed of the capital sum of £—, with interest at £— per cent. per annum, the first half-yearly payment to be made on the — day of —; and do also charge the inheritance or fee of the lands mentioned in the second schedule hereto with the payment to — of the yearly sum of — pounds — shillings and — pence, payable half-yearly on the — day of — in every year, for the term of — years, being a proportionate repayment, according to the table to the same schedule annexed, of the capital sum of £—, with interest at £— per cent. per annum, the first half-yearly payment to be made on the — day of —; and do further release and exempt the said lands respectively from the respective residues of the said charge created by the above-mentioned absolute order.

Dated this — day of —.

FIRST SCHEDULE.

Name, &c. of Lands.	Land-owner.	Occupier.	Parish.	County.	Total Acreage.

TABLE.

Half-yearly Payments.	Proportionate Repayments of the Loan.	Interest at £— per Cent. per Annum.

SECOND SCHEDULE.

Name, &c. of Lands.	Land-owner.	Occupier.	Parish.	County.	Total Acreage.

TABLE.

Half-yearly Payments.	Proportionate Repayments of the Loan.	Interest at £— per Cent. per Annum.

SCHEDULE (E).

Form of Order for exempting Lands.

The Improvement of Land Act, 1864.

County of —, parish of —.

Whereas, by an absolute order under this act, dated the — day of —, and numbered —, the lands mentioned in the first and second schedules hereto were charged with the payment to —, of the yearly sum of £—, payable half-yearly, for the term of — years:

And whereas, upon application made to them, the Inclosure Commissioners for England and Wales see fit to release and exempt from such charge such of the said lands as are particularised in the first schedule hereto:

Now, therefore, the said Inclosure Commissioners, in pur-

suance of the Improvement of Lands Act, 1864, do, by this order under their hands and seal, release and exempt the said lands mentioned in the first schedule hereto from the charge created by the above-mentioned absolute order, and from all liability thereto, and do hereby declare that the said charge applies to and continues in force as to the lands particularised in the second schedule hereto only.

Dated this — day of —.

SCHEDULE I. (Lands exempted).

Name, &c. of Lands.	Land-owner.	Occupier.	Parish.	County.	Total Acreage.

SCHEDULE II. (Lands still subject to Rent-charge).

Name, &c. of Lands.	Land-owner.	Occupier.	Parish.	County.	Total Acreage.

SCHEDULE (F.)

Vesting Order.

The Inclosure Commissioners for England and Wales, in pursuance of the Improvement of Land Act, 1864, do, by this order under their hands and seal, in consideration of £— to them paid by A. B., of —, transfer to and vest in the said A. B., his executors, administrators, and assigns, — shares of and in the — Railway or Canal Company, numbered —, and now registered in the name of C. D.

In witness whereof they have hereunto affixed their hands and seal, this — day of —, in the year 18—.

CAP. CXV.

An Act to prohibit the placing of poisoned Flesh and poisonous Matters in Plantations, Fields, and open Places, and to extend the Poisoned Grain Prohibition Act, 1863.

[29th July, 1864.]

Sec. 1. *Short title.*

2. *Penalty for placing poisoned flesh in fields, &c.*

3. *Not to apply to occupier placing poisoned preparations for destruction of vermin.*

4. *As to application of act.*

Whereas it is expedient to extend the provisions of an act passed in the session of Parliament held in the 26 & 27 Vict., intituled "An Act to prohibit the Sale and Use of Poisoned Grain or Seed:" be it enacted &c., as follows:—

Sec. 1. This act may be cited for all purposes as "The Poisoned Flesh Prohibition Act, 1864."

2. Every person who shall knowingly and wilfully set, lay, put, or place, or cause to be set, laid, put, or placed, in or upon any land any flesh or meat which has been mixed with, or steeped in or impregnated with, poison or any poisonous ingredient so as to render such flesh or meat poisonous and calculated to destroy life, shall, upon a summary conviction thereof, forfeit any sum not exceeding 10*l.*, to be recovered in the manner provided by the Poisoned Grain Prohibition Act, 1863: provided always, that nothing herein contained shall prevent owners or occupiers of land in Ireland from laying or causing to be laid any poisonous matter as herein-before described, after a notice has been posted in a conspicuous place, and notice in writing has been given to the nearest constabulary station.

3. Nothing in this act shall make it unlawful for the occupier of any dwelling-house or other building, or the owner of any rick or stack of wheat, barley, oats, beans, peas, tares, seeds, or of any cultivated vegetable produce, to put or place, or cause to be put or placed, in any such dwelling-house or other building, or in any inclosed garden attached to such dwelling-house, or in the drains connected with any such dwelling-house, provided that such drains are so protected with gratings or otherwise as to prevent any dog from entering the same, or within such rick or stack, any poison or poisonous ingredient or preparation for the destruction of rats, mice, or other small vermin.

4. This act shall not apply to any grain, seed, or meal within the provisions of the Poisoned Grain Prohibition Act, 1863, and the provisions of the 5th section of the said Poisoned Grain Prohibition Act, 1863, shall apply to any proceedings instituted under this act, and shall come into operation on the 1st October, 1864.

CAP. CXVI.

An Act to make Provision for distributing the Charge of Relief of certain Classes of poor Persons over the whole of the Metropolis. [29th July, 1864.]

Sect. 1. *After the 29th September, the guardians of parishes or unions in the metropolis may keep account of relief to certain poor, and obtain reimbursement of the amount from the Metropolitan Board of Works.*

2. *The Metropolitan Board of Works shall reimburse the guardians out of their general rate.*

3. *What relief to be reimbursed.*

4. *Provision for the case where vagrant wards established.*

5. *Guardians to provide proper casual wards.*

6. *Not to apply to expenditure for relief after Lady-day, 1865.*

7. *Interpretation of words.*

8. *Short title.*

Whereas it is expedient that provision should be made for distributing the charge of the relief of certain poor persons in the metropolis during the ensuing winter otherwise than is now lawful: be it therefore enacted &c.

Sect. 1. That after the 29th September next, the guardians of every union or parish situated wholly or partly within the district to which the Metropolis Local Management Act applied may, subject to the orders and regulations of the Poor-law Board, make out a separate account of the money expended by them daily in the relief of destitute wayfarers, wanderers, or foundlings, during the hours from eight o'clock at night until eight o'clock in the morning, and submit the same to the auditor appointed to audit their accounts at the usual times of audit, who shall duly examine the same, and shall certify the amount which he shall find to have been legally expended in and about such relief under his hand; and if the Poor-law Board shall have certified, that proper wards or places of reception have been provided by such guardians, the said guardians may thereupon make application in writing to the Metropolitan Board of Works for reimbursement of the amount so certified by the auditor.

2. The said Metropolitan Board of Works shall forthwith pay the amount so certified to the guardians making the application, out of the funds in their possession, from time to time raised under the provisions of the said Metropolis Local Management Act, and the amount so paid shall be deemed to be part of the expenses for which the said board are empowered to make assessments under the said act, and the said guardians shall apply the sum received in aid of the poor rate of their parish or the common fund of their union, as the case may be, and shall account for the same accordingly.

3. The relief to which this act shall apply shall include food and articles of necessity supplied by the said guardians, or by their relieving or other officer, or by any metropolitan police constable authorised by them in such behalf, and also the cost of lodging or shelter hired or temporarily provided for any such poor person, but not money given to him.

4. Where the guardians shall have provided proper wards or other places of reception for this class of poor, and the same shall have been approved of by the Poor-law Board, they may include, as part of the expense incurred by them in the relief of these poor persons, such sum in respect of each pauper as the Poor-law Board shall from time to time allow for the cost and expense of temporarily providing and maintaining such wards or other places.

5. Where no adequate accommodation exists, the guardians shall provide, within their respective unions or parishes, such wards or other places of reception for destitute wayfarers and foundlings as the Poor-law Board, having regard to the number of persons likely to require relief therein respectively, shall direct. In default of making such provision, and until the same has been made, the guardians of the

union or parish so making default shall not be entitled to the benefit of this act.

6. The provisions of this act shall not apply to any expenditure for relief incurred after the half-year which will expire at Lady-day, 1865.

7. The several words used in this act shall be construed as in the act of the 4 & 5 Will. 4, c. 76, and the subsequent acts explaining and extending the same, and the provisions thereof not inconsistent with anything herein contained shall be incorporated herewith.

8. This act may be cited for all purposes as "The Metropolitan Houseless Poor Act, 1864."

CAP. CXVII.

An Act to render permissive the Use of the Metric System of Weights and Measures. [29th July, 1864.]

Sect. 1. *Short title.*

2. *Contracts may be made in terms of the metric system.*

3. *Equivalents of metric weights and measures in terms of weights and measures.*

Whereas, for the promotion and extension of our internal as well as our foreign trade, and for the advancement of science, it is expedient to legalise the use of the metric system of weights and measures: be it enacted &c., as follows:—

Sect. 1. This act may be cited as "The Metric Weights and Measures Act, 1864."

2. Notwithstanding anything contained in any act of Parliament to the contrary, no contract or dealing shall be deemed to be invalid, or open to objection, on the ground that the weights or measures expressed or referred to in such contract or dealing are weights or measures of the metric system, or on the ground that decimal subdivisions of legal weights and measures, whether metric or otherwise, are used in such contract or dealing.

3. The table in the schedule hereto annexed shall be deemed to set forth, in terms of the weights and measures in force in this country, the equivalents of the weights and measures therein expressed in terms of the metric system, and such table may be lawfully used for computing, determining, and expressing, in weights and measures, weights and measures of the metric system.

SCHEDULE TO WHICH THIS ACT REFERS.

SCHEDULE of TABLES of the Values of the principal Denominations of Measures and Weights on the Metric System expressed by means of the legalised Denomination of Measures and Weights in Great Britain and Ireland.

MEASURES OF LENGTH.

Metric Denominations and Values.		Equivalents in British Denominations.			
—	Metres.	Miles.	Yards.	Ft.	In. Dec.
Myriametre....	10,000	{ or	376	0	11·9
Kilometre.....	1,000		1093	0	11·9
Hectometre....	100		109	1	10·79
Dekametre....	10		10	2	9·7079
Metre.....	1		1	0	3·3708
Decimetre....	$\frac{1}{10}$				3·371
Centimetre....	$\frac{1}{100}$				0·3037
Millimetre....	$\frac{1}{1000}$				0·0394

MEASURES OF SURFACE.

Metric Denominations and Values.		Equivalents in British Denominations.			
—	Square Metres.	Acres.	Sq. Yds.	Decimals.	
Hectare, i. e. 100 ares	10,000	{ or	2,280	3326	
Dekare, i. e. 10 ares ..	1,000		11,960	3326	
Are	100		1,196	0333	
Centiare, i. e. $\frac{1}{100}$ are ..	1		119	0033	
				1	1900

MEASURES OF CAPACITY.

Metric Denominations and Values.		Equivalents in British Denominations.						
—	Cubic Metres.	Quarters.	Bushels.	Pecks.	Gallons.	Quarts.	Pints.	Decimals.
Kilolitre, i. e. 1000 litres	1	3	3	2	0	0		0.77
Hectolitre, i. e. 100 litres	$\frac{1}{10}$		2	3	0	0		0.077
Dekalitre, i. e. 10 litres	$\frac{1}{100}$			1	0	0		1.8077
Litre	$\frac{1}{1000}$							1.76077
Decilitre, i. e. $\frac{1}{10}$ litre	$\frac{1}{10000}$							0.176077
Centilitre, i. e. $\frac{1}{100}$ litre	$\frac{1}{100000}$							0.0176077

WEIGHTS.

Metric Denominations and Values.		Equivalents in British Denominations.						
—	Grams.	Cwtls.	Stones.	Pounds.	Ounces.	Drams.	Decimals.	
Millier	1,000,000	19	5	6	9		15.04	
Quintal	100,000	1	7	10	7		6.304	
Myriagram	10,000		1	8	0		11.8304	
Kilogram	1,000	{ (or 15432.3487 grains)				3	4.3890	
Hectogram	100						8.4383	
Dekagram	10						5.6438	
Gram	1						0.56438	
Decigram	$\frac{1}{10}$						0.056438	
Centigram	$\frac{1}{100}$						0.0056438	
Milligram	$\frac{1}{1000}$						0.00056438	

CAP. CXVIII.

An Act to amend the Acts relating to Salmon Fisheries in Scotland. [29th July, 1864.]

CAP. CXIX.

An Act to make Provision for the Discipline of the Navy. [29th July, 1864.]

CAP. CXX.

An Act to facilitate in certain Cases the obtaining of further Powers by Railway Companies. [29th July, 1864.]

Sect. 1. Short title.

2. Interpretation of terms.

3. Act to apply in cases therein named.

4. As to application for certificate by company to Board of Trade.

5. Said board to inquire if requirements have been complied with ;

6. And to consider all representations and objections.

7. On railway or canal company affected giving notice of opposition, proceedings before Board of Trade to cease.

8. Further proceedings to be in Parliament.

9. Power to Board of Trade to settle certificate according to nature of application as herein named.

10. Insertion of conditions in certificate.

11. Form of certificate.

12. Draft certificate to be laid before Houses of Parliament.

13. Notice thereof to be given.

14. If either House resolve that certificate ought not to be made, it shall not be proceeded with.

15. If neither House resolve that certificate ought not to be made, Board of Trade may issue the same.

16. Publication of certificate in Gazette.

17. Operation of certificate as special act.

18. Judicial notice of certificate.

19. Interpretation of certificate.

20. Parts of the 26 & 27 Vict. cc. 92 and 118 incorporated.

21. Rule as to short distances.

22. Restriction as to issue of shares.

23. Restrictions on company as to borrowing, &c.

24. Power to Board of Trade to reject application.

25. Nothing to exempt railways from operation of general acts.

26. Certificate under this and Railways Construction Act.

27. Approval by members of company required, as under Standing Orders.

28. Power for Board of Trade to amend or revoke certificate.

29. Power to correct error.

30. Proof of certificate.

31. Copies of certificates for sale.

32. Application of act to proprietors of railways generally.

33. Recovery and application of penalties.

34. Custody of documents.

35. General rules in schedule, with power for amendment.

36. Annual report to Parliament by Board of Trade.

Whereas it is expedient that in certain cases railway companies be enabled to obtain further powers on complying with the conditions of a general act of Parliament, without being obliged to procure in each case a special act: be it therefore enacted &c., as follows:—

Preliminary.

Sect. 1. This act may be cited as "The Railway Companies Powers Act, 1864."

2. In this act—

The term "railway" includes works connected with or for the purposes of a railway, and also a railway authorised to be but not actually constructed:

The term "railway bill" means a bill pending in or intended to be introduced into either House of Parliament, having for its object or one of its objects to authorise the making of a railway:

The term "the Companies Clauses Acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, the Companies Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845; together with in each case the Companies Clauses Act, 1863:

The term "the Board of Trade" means the Lords of the Committee for the time being of her Majesty's Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

Description of Cases within this Act.

3. This act shall take effect and apply in each of the cases following; namely,

I.—Where a railway company are desirous that authority should be given to themselves and some other railway company or companies to enter into an agreement with respect to all or any of the matters following; namely,

The maintenance and management of the railways of the companies respectively, or of any one or more of them, or of any part thereof respectively;

The use and working of the railways or railway, or of any part thereof, and the conveyance of traffic thereon;

The fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues levied, taken, or arising in respect of traffic;

The joint ownership, maintenance, management, and use of a station or other work; or the separate ownership, maintenance, management, and use of several parts of a station or other work;

II.—Where a railway company are desirous of obtaining an extension of the time limited for the sale by them of superfluous lands:

III.—Where a railway company incorporated by special act or by certificate under the Railways Construction Facilities Act, 1864, are desirous of obtaining authority to raise additional capital.

Application for Certificate.

4. In any such case the company, if desirous to obtain a certificate under this act, shall proceed as follows; namely,

(1). They shall apply to the Board of Trade for a certificate under this act:

(2). They shall lodge at the office of the Board of Trade a draft of the certificate as proposed by them:

(3). They shall publish notice of the application according to the general rules under this act.

5. As soon as conveniently may be after the time for completion of the required notice, the Board of Trade shall proceed to inquire whether the company have complied with the requirements of the general rules respecting notice.

6. The Board of Trade, before settling a draft of a certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them, respecting the application.

Opposition of Railway or Canal Company to Application.

7. If in any case any railway or canal company desire to be heard by counsel, agents, and witnesses, against the application of the promoters, and (within such time as is prescribed by general rules under this act) lodge at the office of the Board of Trade a notice in writing to that effect (hereinafter referred to as a notice of opposition) in the form set forth in the schedule to this act (with such variations as circumstances require), in that case the Board of Trade, if the railway or canal company lodging the notice would be affected in any way by the proposed certificate, shall not proceed on the application of the promoters.

8. Where the Board of Trade do not proceed on the application, they shall, not later in any year than the 15th February, if Parliament is then sitting, and if not, then within seven days after the next meeting of Parliament, lay before both Houses of Parliament a copy of the draft certificate lodged by the promoters and of the notice of opposition; and the promoters shall be at liberty to seek, by way of bill, in the same session, in such manner, and on such conditions, as the Houses of Parliament respectively, by Standing Order or otherwise, from time to time direct, such powers as were sought by them by way of certificate.

Settlement of Draft Certificate.

9. Where the Board of Trade proceed on the application, then, on being satisfied that the company have complied with the requirements of the general rules respecting notice, they may, if they think fit, settle a draft of a certificate, certifying to the effect following; namely,

In the first-mentioned case, that the companies in the certificate specified are authorised to agree among them-

selves with respect to all or any of the matters aforesaid in the certificate specified;

In the secondly-mentioned case, that the time limited for the sale by the company of the superfluous lands is extended as in the certificate specified:

In the thirdly-mentioned case, that the company are authorised to raise, as capital, for the purposes of the certificate, such additional sum of money as therein limited, by the issue of new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the company, or as may be prescribed in the certificate, and with power to create and issue debenture stock.

10. The Board of Trade may (subject to the provisions of this act, and having regard to the provisions of any special act relating to any company empowered by a certificate), insert in the certificate such provisions as they, according to the circumstances of the case, deem necessary or proper for better effectuating the purposes of the certificate, and the same shall be deemed to all intents part of the certificate.

11. The certificate may be in the form set forth in the schedule to this act, with such provisions as aforesaid.

Submission of Draft Certificate to Houses of Parliament.

12. The Board of Trade shall lay the draft certificate settled by them before both Houses of Parliament within seven days after the same is settled, if Parliament is then sitting; or if not, then within seven days after the next meeting of Parliament, but not later in any year than the 1st June.

13. On the draft certificate being settled, the promoters shall give notice thereof, according to general rules under this act.

14. If either House of Parliament, within six weeks after the draft of a certificate settled by the Board of Trade is laid before that House, resolves that the certificate ought not to be made, the same shall not be further proceeded with.

Issue and Publication of Certificate.

15. If neither House of Parliament, within the period aforesaid, thinks fit to resolve that the certificate ought not to be made, then, as soon as the period of six weeks after the laying of the draft certificate before both Houses of Parliament has expired, the Board of Trade may make and issue a certificate in conformity with such draft.

16. The certificate shall be published as follows; namely, Where one company only is thereby empowered, then in the London, Edinburgh, or Dublin Gazette, according as the head office of the company is situate in England, Scotland, or Ireland:

Where two or more companies are thereby empowered, then in one or more of the Gazettes, according as the several head offices of the companies respectively are situate in England, Scotland, and Ireland respectively.

Effect of Certificate.

17. As from the time (not being prior to such publication) in the certificate prescribed, and if none is prescribed then as from the time of such publication, the certificate shall have the same force and operation, and shall be as absolutely valid and conclusive to all intents, as if the contents thereof (taken in conjunction with this act) had been expressly enacted by Parliament; and the validity of the certificate shall not be impeached on account of any alleged informality in any court or elsewhere.

18. The certificate shall be judicially noticed without being specially pleaded.

19. Terms used in the certificate shall have the same meanings as they have when used in this act.

20. There shall be incorporated with the certificate (which shall for this purpose be deemed the special act)—

In the first-mentioned case, Part III of the Railways Clauses Act, 1863;

In the thirdly-mentioned case, the Companies Clauses Acts.

21. In the first-mentioned case, during the continuance of any agreement for the joint working of any two railways, in the calculation of tolls and charges for short distances in respect of traffic conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway.

22. It shall not be lawful for any company empowered by

a certificate under this act to issue any share created under the authority of the certificate, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one-fifth part of the amount of such share is paid up in respect thereof.

23. In the thirdly-mentioned case the company, whether incorporated by special act or by certificate, shall be subject to the following restrictions; namely,

- (1). They shall not exercise any power of borrowing money under the certificate until the whole of the share capital authorised by the certificate is subscribed for or taken, and until one-half thereof is actually paid up, and until they prove to the justice who is to certify under sect. 40 of the Companies Clauses Consolidation Act, 1845, or (in Scotland) to the sheriff who is to certify under sect. 42 of the Companies Clauses Consolidation (Scotland) Act, 1845, as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares are taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same (of which matters the certificate of the justice or sheriff shall be sufficient evidence):
- (2). They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorised by the certificate:
- (3). They shall not, out of money raised under the certificate by calls or borrowing, pay interest or dividend to a shareholder on the amount of calls made on his shares, whether created under the certificate or otherwise (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made as is allowed by the Companies Clauses Act):
- (4). They shall not, out of money so raised, pay or deposit any money that may be required to be paid or deposited in relation to any application to Parliament or the Board of Trade:
- (5). They shall apply every part of the money so raised only for the purposes for which it is by the certificate authorised to be applied.

Miscellaneous.

24. Nothing in this act shall make it obligatory on the Board of Trade to settle a draft of a certificate in any case if it appears to the Board of Trade for any reason that the application for a certificate should not be complied with.

25. Nothing in the certificate shall exempt any railway to which it relates, or the company to whom that railway belongs, from the provisions of any general act of Parliament relating to railways, or to the better audit of the accounts of railway companies, passed before or after the issuing of the certificate, or from any revision and alteration, under the authority of Parliament, of the maximum tolls and charges allowed to be taken in respect of that railway.

26. A certificate may be made under this act and the Railways Construction Facilities Act, 1864, jointly, and in any case the forms of certificate given in this act and the said act may be adapted to the circumstances of the case.

27. Where, in case the company were proceeding by a railway bill, instead of under this act, the approval of the bill in any manner by the members of the company would be required under the Standing Orders of either House of Parliament for the time being in force, the Board of Trade shall not issue a certificate without being satisfied that the members of the company have in like manner approved of the application to the Board of Trade.

28. Subject and according to the restrictions and provisions of this act, the Board of Trade, on the application of the company, may from time to time amend, extend, or vary by certificate, any certificate issued under this act, and may by certificate revoke a previous certificate issued under this act.

29. If in any case it is made to appear to the Board of Trade that any error has been committed in a certificate, or in relation thereto, the Board of Trade may, subject and ac-

cording to the restrictions and provisions of this act, on the application of the company, body, or person affected by the error, and on notice to the company or companies empowered by the certificate, correct the error by a further certificate.

30. A copy of the London, or Edinburgh, or Dublin Gazette, containing a certificate, or a copy of a certificate, purporting to be printed by the printers of the London, Edinburgh, or Dublin Gazette, shall be conclusive evidence of the certificate, and of the due publication thereof, without any proof of the Gazette, or without any proof of the copy, having been in fact so printed, as the case may be.

31. Every company empowered by a certificate shall at all times keep at their head office copies of the certificate printed by the printers of the Gazette, or one of the Gazettes, in which the same was published in such form as general rules direct, to be sold to all persons desiring to buy the same, at a price not exceeding 1s. for each copy.

If any company fail to comply with this provision, they shall be liable to a penalty not exceeding 20l., and to a further penalty, not exceeding 5l. for every day during which such failure continues after the first penalty is incurred.

32. The provisions of this act relative to the first-mentioned case and to the secondly-mentioned case respectively shall extend and apply, mutatis mutandis, to the proprietors of a railway although not incorporated as a company.

33. Penalties under this act, or under a certificate, the recovery and application whereof are not otherwise provided for, shall be recovered and applied as penalties under the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, as the case may require, are recoverable and applicable.

34. The act of the 7 Will. 4 & 1 Vict. c. 83, "to compel clerks of the peace and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament," shall apply to documents required to be deposited by general rules under this act.

35. The general rules under this act shall, in the first instance, be those set forth in the schedule to this act; and the Board of Trade may from time to time, for the better execution of this act, make general rules adding to, altering, or revoking any general rules for the time being in force under this act; but any general rules so made by the Board of Trade shall not have effect unless, and until, they are laid before both Houses of Parliament; and if either House of Parliament, within six weeks after the same are laid before that House, thinks fit to resolve that the same, or any part thereof, ought not to take effect, the same, or that part thereof, (as the case may be), shall not take effect; otherwise all rules made by the Board of Trade, under the present section, shall be of the same force and effect as if they had been comprised in the schedule to this act.

All general rules which are to take effect under the present section shall be published in the London, Edinburgh, and Dublin Gazettes.

36. Not later than the 1st July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to, and proceedings of, the Board of Trade under this act during the year then last past.

THE SCHEDULE REFERRED TO IN THE FOREGOING ACT.

(I.)—Notice of Opposition.

In the Matter of the Railway Companies Powers Act, 1864, and the Application of the ——— Railway Company for a Certificate, the Draft whereof is intitled [set out title.]

We, the ——— railway [or canal] company, hereby declare and give notice, that we desire to be heard by counsel, agents, and witnesses against the granting to the above-named railway company of the powers sought to be obtained by them by the above-mentioned application.

Dated this ——— day of ———, 18—.

Witness, A. B.

— (L.S.)

(II.)—Form of Certificate of Board of Trade.

The ——— Railway Company.

Certificate of the Board of Trade for the Extension of Time for Sale of superfluous Lands [or, as the case may be.]

Whereas the ——— Railway Company have complied with

the requirements of the Railway Companies Powers Act, 1864:

Now, therefore, the Board of Trade do, by this their certificate, in pursuance of the said act, and by virtue and in exercise of the powers thereby in them vested, and of every other power enabling them in this behalf, certify as follows:

[Here are to follow the provisions of the certificate showing the powers conferred and the terms and conditions (if any) imposed.]

(Signed) C. D.,
Secretary to the Board of Trade.

The Board of Trade, Whitehall.

Dated this — day of —.

(iii).—General Rules.

Form of Application.

1. The application to the Board of Trade for a certificate is to be made by a memorial in writing under the common seal of the company, lodged at the office of the Board of Trade.

2. Together with the memorial the company are to lodge a printed draft of the certificate as proposed by the company.

Advertisements as to Application.

3. Notice of the application to the Board of Trade is to be given by advertisement published as follows; namely,

In every case, once in each of three successive weeks in some one and the same newspaper of the county, city, or town, or county of a city or town, wherein the head office of the promoters is situate:

In the case referred to in the foregoing act as the first-mentioned case, once in each of three successive weeks in some one and the same newspaper of each county, city, or town, or county of a city or town, wherein the head office of any railway company with whom the promoters propose to enter into an agreement is situate:

If in any case there is not any such newspaper as hereinbefore described, then in like manner in a newspaper of some adjoining or neighbouring county:

In every case where one company only is proposed to be empowered, then in the London, Edinburgh, or Dublin Gazette, according as the head office of the company is situate in England, Scotland, or Ireland:

In every case where two or more companies are proposed to be empowered, then in one or more of the Gazettes, according as the several head offices of the company respectively are situate in England, Scotland, and Ireland respectively.

4. The advertisements are to be published either in the month of June or in the month of November, and not at any other time.

5. Each advertisement is to give the address of an office in London, where copies of the draft certificate will be supplied as hereinafter directed.

6. Each advertisement is to state that all persons desirous of making to the Board of Trade any representation, or of bringing before them any objection, respecting the application, may do so by letter addressed to the Secretary of the Board of Trade on or before the 1st August or the 1st January next succeeding the date of the advertisement, according as the same is published in the month of June or in the month of November.

7. Within one week after the publication of the latest advertisement a copy of each of the newspapers and Gazettes containing the several advertisements is to be lodged at the office of the Board of Trade.

Notice to Landowners.

8. In the case referred to in the foregoing act as the secondly-mentioned case, the promoters, in the month of June or in the month of November (as the case may be) in which the advertisements are published, are to serve notice of the application on the owners of lands adjoining to the lands to which the application relates.

Notice of Opposition.

9. Notice of opposition by a railway or canal company is to be lodged at the office of the Board of Trade, not later than the 1st August or the 1st January next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

Notice of Settlement of Draft Certificate.

10. On the draft certificate being settled by the Board of Trade, the promoters are to serve a copy thereof, with a notice that the draft has been settled by the Board of Trade, on every company, body, or person by whom any representation or objection respecting the application was made to or brought before the Board of Trade, and are also to give, by advertisement or otherwise, such public or other notice (if any) thereof, as according to the circumstances of the case the Board of Trade direct.

Supply of Copies of Draft Certificate.

11. From the time of the publication of the first advertisement the promoters are to keep in the office mentioned in this behalf in the advertisement, a sufficient number of copies of the draft of the certificate as proposed by them, and are to furnish there copies to all persons applying for them, at the price of not more than 6d. each.

12. From the time of the settlement of the draft certificate by the Board of Trade the promoters are to keep in the office aforesaid copies of the draft supplied to them for that purpose by the Board of Trade, and are to furnish there copies thereof to all persons applying for them at such price (if any) as the Board of Trade from time to time direct.

Printing of Certificate.

13. Copies of the certificate printed by the printers of a Gazette are to be printed on ordinary white folio paper, similar in size to the paper on which the public general acts of Parliament are printed for public sale.

CAP. CXXI.

An Act to facilitate in certain Cases the obtaining of Powers for the Construction of Railways. [20th July, 1864.]

Sect. 1. Short title.

2. Interpretation of terms.

3. Power for promoters of railway and all persons interested in land to enter into provisional contracts for land required.

4. Contracts for sale of lands belonging to the Crown or Duchy of Lancaster or Cornwall.

5. User of or interference with public or turnpike roads.

6. After land contracted for, power for promoters to apply for certificate, publish notices, &c.

7. Consideration of application by Board of Trade.

8. Board of Trade to consider all representations and objections.

9. On railway or canal company affecting giving notice of opposition, proceedings before Board of Trade to cease.

10. Further proceedings to be in Parliament.

11. Power to Board of Trade to settle certificate.

12. Insertion of conditions in certificate.

13. Form of certificate.

14. Draft certificates to be laid before Houses of Parliament.

15. Notice thereof to be given.

16. If either House resolve that certificate ought not to be made, it shall not be proceeded with.

17. If neither House resolve that certificate ought not to be made, Board of Trade may issue the same.

18. Publication of certificate in Gazette.

19. Operation of certificate as special act.

20. Judicial notice of certificate.

21. Interpretation of certificate.

22. Cesser of powers at expiration of prescribed time.

23. Incorporation of Lands Clauses Acts in certificate, except provisions giving compulsory powers, &c.

24. In what cases company shall be incorporated.

25. In others company may be incorporated.

26. Power for Board of Trade to incorporate company by certificate.

27. Incorporation of Companies Clauses Acts.

28. Restriction as to issue of shares.

29. Restrictions on company as to borrowing, &c.

30. Contracts by promoters binding on company.

31. Incorporation of Railways Clauses Acts in certificate, except as to compulsory powers, &c.

32. Restriction on alterations of plan or section.

33. *Provision respecting gauge.*
34. *Promoters to deposit 8l. per cent. on estimate in Court of Chancery, &c.*
35. *Warrant of Board of Trade for payment into court.*
36. *Liberty for promoters to bring in Exchequer bills, &c.*
37. *Provision for vacations in offices of courts.*
38. *Power for court to direct investment.*
39. *Interpretation of "deposit fund" and "depositors" in following provisions.*
40. *Repayment of deposit on completion of railway or on terms.*
41. *Forfeiture of deposit on non-completion of railway, &c.*
42. *Application of money recovered on bond.*
43. *Depositors to receive dividends accruing while fund in court.*
44. *Proof as to capital and expenditure, execution of bond, &c.*
45. *Protection to Board of Trade in case of error, &c.*
46. *Mode of application to courts.*
47. *Power for courts to make general orders.*
48. *Penalty on company failing to open new railway in certain cases.*
49. *Tolls, &c. in schedule.*
50. *Power for Board of Trade to vary tolls, &c.*
51. *Enactments in schedule applied to the railway and company, subject to variations.*
52. *Board of Trade may reject the application.*
53. *Saving for general acts, or revision of charges.*
54. *New works in connexion with railway.*
55. *Power to authorise joint work.*
56. *Power to promoters, being a company, to raise additional capital.*
57. *Where promoters are a company, approval of application by a meeting.*
58. *Power to Board of Trade to amend or revoke certificate.*
59. *Power to correct error.*
60. *Proof of certificate.*
61. *Copies of certificate for sale.*
62. *Recovery and application of penalties.*
63. *As to custody of documents under the 7 Will. 4 & 1 Vict. c. 83.*
64. *General rules in schedule, with power for amendment.*
65. *Annual report to Parliament by Board of Trade.*

Whereas it is expedient to facilitate the making of branch and other lines of railway, and deviations of existing railways, and of railways in course of construction, and also the execution of new works connected with or for the purposes of existing railways:

And whereas the object aforesaid would be promoted if, where all landowners and other parties beneficially interested are consenting to the making of a railway or the execution of a work, the persons desirous of making or executing the same were enabled to obtain power to do so, on complying with the conditions of a general act of Parliament, without being obliged to procure a special act:

Be it therefore enacted &c., as follows:—

Preliminary.

Sect. 1. This act may be cited as "The Railways Construction Facilities Act, 1864."

2. In this act—

The term "lands" includes any estate, right, or interest in lands:

The term "the promoters" means in each case the company or persons intending to apply to the Board of Trade for such a certificate as is hereinafter provided for, and, after the application is made, the company or persons actually making the application, as the case may require:

The term "the railway" means in each case the railway and works intended by the promoters before the issuing of the certificate, and, after the issuing thereof, the railway and works therein comprised, as the case may require:

The term "the Lands Clauses Acts" means, so far as the

enactment in which that term is used relates to England, or to a certificate to be operative in England, the Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860; and so far as the same relates to Ireland, or to a certificate to be operative in Ireland, the Railways Act (Ireland) 1851, together with acts incorporated in or amending that act:

The term "the Companies Clauses Acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, the Companies Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, the Companies Clauses Consolidation (Scotland) Act, 1845; together with, in each case, the Companies Clauses Act, 1803:

The term "the Railways Clauses Acts" means, so far as the enactment in which that term is used relates to England or Ireland, or to a certificate to be operative in England or Ireland, the Railway Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, or to a certificate to be operative in Scotland, the Railways Clauses Consolidation (Scotland) Act, 1845; together with, in each case, the Railways Clauses Act, 1803:

The term "railway bill" means a bill pending in or intended to be introduced into either House of Parliament, having for its object or one of its objects to authorise the making of a railway:

The term "the Board of Trade" means the Lords of the Committee for the time being of her Majesty's Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

Contracts for Lands.

3. Where promoters of a railway intend to apply, under this act, for authority to make the railway, they and all parties seised or possessed of or entitled to lands required for the railway shall, in order to the purchase or taking and sale of those lands for the railway, have all such powers and capacities as, in order to the purchase or taking and sale of lands required for an undertaking authorised by a special act of Parliament, are conferred by the Lands Clauses Acts on the promoters of the undertaking so authorised, and on parties seised or possessed of or entitled to lands, or any estate, right, or interest in lands, required for that undertaking; all which powers and capacities shall be enjoyed and may be exercised by the promoters, and by all such parties as aforesaid, as fully and effectually in all respects as if the promoters had obtained a special act incorporating the Lands Clauses Acts, and authorising them to make the railway, and to purchase or take the lands required for the same; subject, nevertheless, to the following restrictions and provisions; namely,

(1). Nothing herein shall confer on the promoters and parties aforesaid any of the powers or capacities conferred by the part of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, or by the part of those acts with respect to the entry upon lands by the promoters of the undertaking, and by such provisions of those acts as provide for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement (except only as to such of those provisions as provide for the determination of the amount of compensation to be paid for enfranchisement of copyholds; and for the purposes of the present section, sect. 96 of the Lands Clauses Consolidation Act, 1845, relating to the enfranchisement of copyholds, shall be read and have effect as if the limitation of time therein contained were omitted therefrom):

(2). Any party under disability or incapacity, and not having power to sell and convey or release any lands, except under the Lands Clauses Acts, as ap-

plied by the present section, shall have capacity only to contract with the promoters for the sale of those lands, and shall not (before such a certificate of the Board of Trade, as is hereinafter provided for, comes into operation) have capacity, further or otherwise than if this act had not been passed, to carry the contract into execution, or in pursuance thereof to convey or deliver possession of or release those lands:

(3). The promoters (before such a certificate as aforesaid comes into operation) shall be empowered by this act only to contract for lands, and they shall not have capacity, further or otherwise than if this act had not been passed, to take or hold lands.

4. Where lands required for the railway belong to or are enjoyed by her Majesty the Queen, her heirs or successors, in right of the Crown, or form part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall, any contract for the purposes of this act may be entered into in respect of those lands, as follows; namely,

In the first-mentioned case, by the Commissioners of her Majesty's Woods, Forests, and Land Revenues, or one of them, with the consent of the Commissioners of her Majesty's Treasury:

In the secondly-mentioned case, by the Chancellor of the Duchy by writing under his hand, attested by the clerk of the council of the duchy:

In the thirdly-mentioned case, by the Duke of Cornwall or other the persons for the time being empowered to dispose for any purpose of lands of the duchy.

5. Notwithstanding anything in this act, it shall not be necessary for the promoters, before applying under this act for authority to make the railway, to enter into any contract with respect to any part of a turnpike road or public highway intended to be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway; but the Board of Trade before they settle a draft of such a certificate as hereinafter provided for, shall be satisfied that due provision is made for the interests of the trustees or other persons having the management of every such road or highway, and for the safety and convenience of the public in relation thereto.

Application for Certificate.

6. When the promoters have contracted for the purchase of all the lands required for the railway, and are desirous of obtaining a certificate under this act, they shall proceed as follows; namely,

(1). They shall apply to the Board of Trade for a certificate under this act:

(2). They shall deposit maps, plans, sections, and books of reference, and an estimate of the expense of the construction of the railway, and lodge a draft of the certificate as proposed by them, according to the general rules under this act:

(3). They shall publish notice of the application according to such general rules.

7. As soon as conveniently may be after the time for completion of the required deposit and notice, the Board of Trade shall proceed to inquire in such manner, and to such extent, as shall appear to them sufficient, whether the promoters have contracted for the purchase of all the lands required for the railway, and to inquire whether the promoters have complied with the requirements of the general rules respecting deposit and notice.

8. The Board of Trade, before settling the draft of a certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them, respecting the application.

Opposition of Railway or Canal Company to Undertaking.

9. If in any case any railway or canal company desire to be heard by counsel, agents, and witnesses against the proposed undertaking, and (within such time as is prescribed by general rules under this act) lodge at the office of the Board of Trade a notice in writing to that effect (hereinafter referred to as a notice of opposition) in the form set forth in the schedule to this act (with such variations as circumstances require), in that case the Board of Trade, if the rail-

way or canal company lodging the notice would be affected in any way by the proposed undertaking, shall not proceed on the application of the promoters.

10. Where the Board of Trade do not proceed on the application, they shall, not later in any year than the 15th February, if Parliament is then sitting, and if not, then within seven days after the next meeting of Parliament, lay before both Houses of Parliament a copy of the draft certificate lodged by the promoters and of the notice of opposition; and the promoters shall be at liberty to seek, by way of bill, in the same session, in such manner, and on such conditions, as the Houses of Parliament respectively, by Standing Order or otherwise, from time to time direct, such powers as were sought by them by way of certificate.

Settlement of Draft Certificate.

11. Where the Board of Trade proceed on the application, then, on being satisfied that the promoters have contracted for the purchase of all the lands required for the railway, and have complied with the requirements of the general rules respecting deposit and notice, they may, if they think fit, settle a draft of a certificate certifying to the effect, that the company, or persons therein specified, are authorised to make the railway therein described.

12. The Board of Trade may (subject to the provisions of this act) insert in the draft certificate such provisions as they, according to the circumstances of the case, deem necessary or proper for better effectuating the purposes of the certificate; and the same shall be deemed to all intents part of the certificate.

13. The certificate may be in the form set forth in the schedule to this act, with such provisions as aforesaid.

Submission of Draft Certificate to Houses of Parliament.

14. The Board of Trade shall lay the draft certificate settled by them before both Houses of Parliament, within seven days after the same is settled, if Parliament is then sitting, and if not, then within seven days after the next meeting of Parliament, but not later in any year than the 1st June.

15. On the draft certificate being settled, the promoters shall give notice thereof, according to general rules under this act.

16. If either House of Parliament, within six weeks after the draft of a certificate settled by the Board of Trade is laid before that House, resolves that the certificate ought not to be made, the same shall not be further proceeded with; and in that case, all contracts for the purchase or taking of lands for the purposes of the undertaking shall cease to be binding on either party.

Issue, Publication, and Effect of Certificate.

17. If either House of Parliament, within the period aforesaid, thinks fit to resolve that the certificate ought not to be made, then, as soon as the period of six weeks after the laying of the draft certificate before both Houses of Parliament has expired, the Board of Trade may make and issue a certificate in conformity with such draft.

18. The certificate shall be published in the London or Edinburgh or Dublin Gazette, respectively, if the railway will be situate wholly in England or Scotland, or in Ireland; and shall be published both in the London and in the Edinburgh Gazette, if the railway will be situate partly in England and partly in Scotland.

19. As from the time (not being prior to such publication) in the certificate prescribed, and if none is prescribed, then as from the time of such publication, the certificate shall have the same force and operation, and shall be as absolutely valid and conclusive to all intents, as if the contents thereof (taken in conjunction with this act) had been expressly enacted by Parliament; and the validity of the certificate shall not be impeached on account of any alleged informality in any court, or elsewhere.

20. The certificate shall be judicially noticed, without being specially pleaded.

21. Terms used in the certificate shall have the same meanings as they have when used in this act.

Duration of Powers under Certificate.

22. If the company, or persons by the certificate empowered to make the railway do not, within five years from

the commencement of the operation of the certificate, or within any shorter period prescribed therein, complete the railway, and open it for public traffic, then (subject to any provisions and qualifications in the certificate contained) all the powers and authorities given by the certificate shall, from and after the expiration of the time aforesaid, cease, except as to so much of the railway as is then completed.

Lands.

23. The Lands Clauses Acts shall be incorporated with the certificate (which shall for this purpose be deemed the special act), except as may be therein excepted, and except as to the following provisions; namely,

- (1). With respect to the purchase and taking of lands otherwise than by agreement:
- (2). With respect to the entry upon lands by the promoters of the undertaking:
- (3). So much of those acts as provides for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement (but excluding from this exception so much of those acts as provides for the determination of the amount of compensation to be paid for enfranchisement of copyholds).

Incorporation of Company.

24. Where the promoters are not a company incorporated by special act, or by previous certificate under this act, and are seven or more in number, a company shall be incorporated by the certificate, for the purposes thereof.

25. Where the promoters are not a company incorporated by special act, or by previous certificate under this act, and are less than seven in number, a company may be incorporated by the certificate for the purposes thereof, if the promoters so desire.

26. Where the certificate incorporates a company, it shall contain proper provisions, with apt terms, for creating a body corporate, by an appropriate name, with perpetual succession and a common seal, and with power to take, hold, and dispose of lands and other property, for the purposes, and subject to the restrictions, of the certificate, and may confer on the company power to borrow on mortgage, and all other usual or proper powers.

27. In every such case the Companies Clauses Acts shall be incorporated with the certificate (which shall be deemed the special act).

28. It shall not be lawful for any company empowered by a certificate under this act to issue any share created under the authority of the certificate, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one-fifth part of the amount of such share is paid up in respect thereof.

29. Every company, whether incorporated by special act or by certificate, empowered by a certificate to borrow money, shall, as regards the money so authorised to be borrowed, be subject to the following restrictions; namely,

- (1). They shall not exercise the said powers of borrowing any money until the whole of the share capital authorised by the certificate is subscribed for or taken, and until one-half thereof is actually paid up, and until they prove to the justice who is to certify under sect. 40 of the Companies Clauses Consolidation Act, 1845, or (in Scotland) to the sheriff, who is to certify under sect. 42 of the Companies Clauses Consolidation (Scotland) Act, 1845, as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares were taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same (of which matters the certificate of the justice or sheriff shall be sufficient evidence);
- (2). They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorised by the certificate:
- (3). They shall not out of money raised under the certi-

ficate by calls or borrowing pay interest or dividend to a shareholder on the amount of calls made on his shares, whether created under the certificate or otherwise (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made, as is allowed by the Companies Clauses Acts):

- (4). They shall not out of money so raised pay or deposit any money that may be required to be paid or deposited in relation to any application to Parliament or the Board of Trade:
- (5). They shall apply every part of the money so raised only for purposes for which it is by the certificate authorised to be applied.

30. Contracts relative to the purchase or taking of lands for the railway, entered into by the promoters before the incorporation of the company by the certificate, shall be as binding on the company as if they had been entered into by the company.

Construction of Railway.

31. The Railways Clauses Acts shall be incorporated with the certificate (which shall be deemed the special act), except as may be therein excepted, and except as to the following provisions; namely,

- (1). Such of the provisions with respect to the construction of the railway and the works connected therewith as relate to the correction of errors and omissions in plans or to plans and sections of alterations:
- (2). With respect to the temporary occupation of lands near the railway during the construction thereof:
- (3). With respect to leasing the railway:

And subject to the following provisions; namely,

- (1). Nothing herein shall confer power for the taking or using of lands for deviation or for any other purpose, otherwise than by agreement:
- (2). Any provision referring to the datum line described in the section approved of by Parliament shall be read as referring to the datum line described in the section approved of by the Board of Trade.

32. Where the promoters desire to make any alteration in the deposited plan or section, they may do so with the consent of the Board of Trade; but the Board of Trade shall not settle a draft of a certificate without being satisfied that all parties interested in lands liable to be affected by or in consequence of the alteration consent thereto.

33. Every railway made under this act in England or Scotland shall be made on the gauge of four feet eight inches and half an inch, unless in any case the certificate prescribes the making of the railway on the gauge of seven feet, or on both those gauges.

Every railway made under this act in Ireland shall be made on the gauge of five feet three inches.

Provisions to secure Completion of Railway.

34. After the certificate is ready to be issued, and before the same is issued, by the Board of Trade, the promoters, unless they are a previously existing company possessed of a railway open for public traffic, shall within such time as general rules under this act direct, pay as a deposit a sum of money not less than 8l. per centum on the amount of their estimate of the expense of the construction of the railway, as follows; namely,

Where the railway, or any part thereof, will be situate in England—into the Bank of England, in the name and with the privy of the Accountant-General of the Court of Chancery in England:

Where the railway will be situate wholly in Scotland—either into the Bank of England in manner aforesaid, or (at the option of the promoters) into a bank in Scotland established by act of Parliament or royal charter, in the name and with the privy of the Queen's Remembrancer of the Court of Exchequer in Scotland:

Where the railway will be situate in Ireland—into the Bank of Ireland, in the name and with the privy of the Accountant-General of the Court of Chancery in Ireland.

35. The Board of Trade may issue their warrant to the promoters for such payment into court, which warrant shall

be a sufficient authority for the persons therein named, or the majority or survivors of them, to pay the money therein mentioned into the Bank therein mentioned, in the name and with the privy of the officer therein mentioned, and for that officer to receive the same, to be placed to his account there, *ex parte* the railway therein mentioned, according to the method (prescribed by statute, or general rules or orders of court, or otherwise), for the time being in force respecting the payment of money into the said courts respectively, and without fee or reward.

36. Provided, that in lieu, wholly or in part, of the payment of money, the promoters may bring into court as a deposit an equivalent sum of Bank Annuities, or of any stocks, funds, or securities on which cash under the control of the respective court is for the time being permitted to be invested, or of Exchequer bills (the value thereof being taken at the price at which the promoters originally purchased the same, as appearing by the broker's certificate of that purchase); and in that case the Board of Trade shall vary their warrant accordingly.

37. At any time when the office of the Accountant-General of the Court of Chancery in England or Ireland is closed, a deposit under this act may nevertheless be made, in such manner as general orders of the respective courts authorise and direct.

38. Where money is so paid into the Court of Chancery in England or Ireland, the court may, on the application of the persons named in the warrant of the Board of Trade, or of the majority or survivors of them, order that the same be invested in such stocks, funds, or securities, as the applicants desire and the court thinks fit.

39. In the subsequent provisions of this act, the term "the deposit fund" means the money deposited, or the stocks, funds, or securities in which the same is invested, or the Bank Annuities, stocks, funds, securities, or Exchequer bills deposited, as the case may be; and the term "the depositors" means the persons named in the warrant of the Board of Trade authorising the deposit, or the majority or survivors of those persons, their executors, administrators, or assigns.

40. The court in which the deposit is made shall, on the application of the depositors, order the deposit fund to be paid, transferred, or delivered out to the applicants, or as they direct, in any of the following events; namely,

- (1). If, within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, the company, or persons thereby empowered to make the railway, complete it, and open it for public traffic; or
- (2). If, within the same time, they (being a company) prove to the satisfaction of the Board of Trade that one-half of their nominal capital authorised by the certificate is paid up, and that they have expended a like amount for the purposes of the certificate; or
- (3). If, at any time after the issuing of the certificate, they execute and deliver to the solicitor of her Majesty's Treasury a bond with a surety or sureties (such bond being prepared to the satisfaction of, and such surety or sureties being approved by, the said solicitor), in a penal sum of twice the amount of the money required to be deposited, conditioned to the effect following, namely, for payment to her Majesty, her heirs or successors, of the amount of the money required to be deposited, if the company or persons empowered by the certificate do not, within the time aforesaid, either complete the railway, and open it for public traffic, or (being a company) give such proof as aforesaid respecting their capital and expenditure.

41. If the company, or persons empowered by the certificate to make the railway, do not, within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, do one or other of the following things, namely—

- (1). Complete the railway, and open it for public traffic; or
- (2). Give (being a company) such proof as hereinbefore mentioned respecting their capital and expenditure; or
- (3). Execute and deliver such a bond as is hereinbefore described—

then and in every such case the deposit fund shall, from and after the expiration of the time aforesaid, be forfeited to her Majesty, and shall accordingly be paid, transferred, or delivered out to or for the account of her Majesty's Exchequer, in such manner as the court in which the deposit is made thinks fit to order, on the application of the solicitor of her Majesty's Treasury, on notice to such parties (if any) as the court thinks fit; and the deposit fund, when so paid, transferred, or delivered, or the proceeds thereof, shall be carried to, and form part of, the Consolidated Fund of the United Kingdom.

42. Where any such bond as aforesaid is given, the amount recovered thereon shall be paid to the account of her Majesty's Exchequer, and shall be carried to, and form part of, the said Consolidated Fund.

43. The depositors shall be entitled to receive payment of the interest or dividends from time to time accruing on the deposit fund while in court; and the court in which the deposit is made may from time to time, on the application of the depositors, make such order as seems fit respecting the payment of the interest or dividends accordingly.

44. The certificate of the Board of Trade that such proof as aforesaid respecting the capital and expenditure of any company has been given to the satisfaction of the Board of Trade, and the certificate of the solicitor of her Majesty's Treasury that such bond as aforesaid has in any case been prepared, executed, and delivered to his satisfaction, shall respectively be sufficient evidence of the matters therein certified.

45. The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest of or dividends on the same, or any part thereof respectively.

46. Any application under this act to the Court of Chancery in England or Ireland shall be made in a summary way in such manner as general orders of those courts respectively direct.

47. The Lord Chancellor of Great Britain, with the advice and assistance of the Lords Justices of the Court of Appeal in Chancery and the Master of the Rolls, and the Vice-Chancellors, or any two of these judges, and the Lord Chancellor of Ireland, with the advice and assistance of the Lord Justice of the Court of Appeal in Chancery in Ireland and of the Master of the Rolls in Ireland, may respectively from time to time make such general orders as seem fit for the regulation of the practice under this act of the Court of Chancery in England and Ireland respectively.

48. Where a certificate is obtained by a previously existing company possessed of a railway open for public traffic, then, if the company fail to complete the railway and open it for public traffic within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, the company shall be liable to a penalty of not less than 20*l.*, and not exceeding 50*l.*, for every day during which such failure continues, except only in respect of any time during which it appears from the certificate of the Board of Trade that the company were prevented from completing the railway or opening it for public traffic by unforeseen accident or circumstances beyond their control, but the want of sufficient funds shall not be deemed a circumstance beyond their control within the meaning of this provision.

Tolls and Charges for Use of Railway.

49. The proprietors of the railway may demand and take, in respect of the railway, tolls, and charges not exceeding the sums specified in the schedule to this act, subject and according to the regulations therein specified.

50. The Board of Trade may nevertheless by a certificate vary the tolls and charges and regulations specified in the schedule to this act, or any of them, if in any case it seems to them necessary or proper, under the circumstances, to do so.

Application of General Railway Acts.

51. The enactments described in the schedule to this act, and any enactments amending, perpetuating, or otherwise affecting any of them, so far as the same are in force at the passing of this act, shall extend and apply, as the case may require, to the railway, and to the company or persons em-

powered by the certificate to make the railway, and shall in all respects operate in relation thereto respectively as if they were expressly repeated and re-enacted in this act, subject, nevertheless, and according to the following variations and provisions; namely,

- (1). For the purposes and within the meaning of any of those enactments, the railway shall be deemed to be a railway made and constructed and carried on under the authority of Parliament and under the powers and provisions of an act of Parliament, and the certificate (taken in conjunction with this act) shall be deemed to be a special act of Parliament regulating or relating to the railway, or the company, body, or persons empowered to make the same (as the case may require):
- (2). Such of those enactments as refer to the time of the passing of an act of Parliament for the construction of a railway, or to the last day of the session in which such act is passed, shall respectively be read and have effect as referring to the time of the commencement of the operation of the certificate:
- (3). The terms "company" and "railway company" used in any of those enactments shall respectively include any persons empowered by the certificate to make the railway:
- (4). Such of those enactments as refer to the directors, or any director, or the secretary, chief or other clerk, accountant, treasurer, or other officer of a company, shall extend and apply to every or any one of the persons (not being a company) empowered by the certificate to make the railway:
- (5). Such of those enactments as refer to a writing under the common seal of the company shall be read and have effect as referring to a writing under the hand and seal of any one of such persons, as aforesaid:
- (6). Such of those enactments as impose any penalty or forfeiture, or any pecuniary liability or any obligation, on a company, or give any right, remedy, or process against a company, shall be read and have effect (so far as the nature and circumstances of the case admit) as imposing a like penalty, forfeiture, liability, or obligation on, or as giving a like right, remedy, or process against, every or any one of such persons as aforesaid, but not so as to authorise the recovery of any penalty or forfeiture from, or the enforcement of any pecuniary liability against, more than one of such persons in respect of the same offence, matter, or thing:
- (7). The amount of any compensation to be made to the owners and occupiers of any lands for loss or injury or inconvenience sustained by them respectively by reason of any works done under the authority of any of those enactments shall, in case of dispute, be settled in manner directed by the Lands Clauses Acts and the Railways Clauses Acts as respectively applicable to the case:
- (8). Such of those enactments as provide for the case of the Board of Trade certifying that the public safety requires additional land to be taken by a company for the purpose of giving increased width to the embankments or inclination to the slopes of the railway, or for making approaches to bridges or archways, or for doing works for the repair or prevention of accidents or slips happening or apprehended to the cuttings, embankments, or other works of the railway, shall be read and have effect, as regards such portions of land as are mentioned in any certificate so given by the Board of Trade, as if compulsory powers of purchasing and taking lands had been contained in the certificate under this act authorising the making of the railway, and the provisions of the Lands Clauses Acts and the Railways Clauses Acts relative to the compulsory purchase or taking of land had been incorporated with that certificate:
- (9). If the railway is in any respect constructed contrary to the provisions of the certificate, or of this act, it shall be deemed to be constructed contrary to the provisions of any of those enactments applicable in the case:
- (10). Nothing herein shall extend or make applicable, for

the purposes of this act, to or in any one of the parts of the United Kingdom, any of those enactments not in force there independently of this act.

Miscellaneous.

52. Nothing in this act shall make it obligatory on the Board of Trade to settle a draft of a certificate in any case if it appears to the Board of Trade for any reason that the application of the promoters should not be complied with; and in case the Board of Trade reject any application, all contracts for the purchase or taking of lands for the purposes of the undertaking shall cease to be binding on either party.

53. Nothing in the certificate shall exempt the railway, or the company, or persons to whom it belongs, from the provisions of any general act of Parliament relating to railways, or to the better audit of the accounts of railway companies, passed before or after the issuing of the certificate, or from any revision and alteration, under the authority of Parliament, of the maximum tolls and charges allowed to be taken under the certificate.

54. All the provisions of this act which relate to the making of a railway shall extend and apply, *mutatis mutandis*, to the making or executing of any work connected with or for the purposes of a railway (as distinguished from the construction of a railway).

55. Subject and according to the provisions of this act, the Board of Trade may, on a joint application or on two or more separate applications, issue a certificate empowering two or more companies, or persons, respectively, to jointly make or execute the whole, or to separately make or execute parts, of a work connected with or for the purposes of a railway, and to jointly or separately use the whole or parts thereof; and all the provisions of this act which relate to the making of a railway, or the making or executing of a work, shall extend and apply to the making or executing of the whole and the separate parts of such work as last aforesaid; and the form of the certificate may be adapted to the circumstances of the case.

56. Where the certificate is obtained by a previously existing company incorporated by special act or by certificate, the certificate may authorise the company to raise, as capital, for the purposes of the certificate, such additional sum of money as therein limited, by the issue of new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the company, or as may be prescribed in the certificate, and with power to create and issue debenture stock.

In every such case the Companies Clauses Acts shall be incorporated with the certificate.

In every such case the restrictions by this act imposed on a company when originally incorporated by certificate, with respect to the exercise of their borrowing power, and to the application of money raised under the certificate by calls or borrowing, shall extend and apply to such previously existing company in respect of such additional capital.

57. Where the certificate is obtained by a previously existing company, incorporated by special act or by certificate, it shall be the duty of the Board of Trade not to settle a draft of the certificate without being satisfied that the members of the company have approved of the application to the Board of Trade, in like manner as, under the Standing Orders of either House of Parliament for the time being in force, their approval of a railway bill would be required to be given in the same case.

58. Subject and according to the restrictions and provisions of this act, the Board of Trade, on the application of any company or persons empowered by a certificate, may from time to time amend, extend, or vary by certificate the previous certificate, and may by certificate revoke the previous certificate.

59. If in any case it is made to appear to the Board of Trade that any error has been committed in a certificate, or in relation thereto, the Board of Trade may, subject and according to the restrictions and provisions of this act, on the application of any company, body, or person affected by the error, and on notice to the company or persons empowered by the certificate, correct the error by a further certificate.

60. A copy of the London, Edinburgh, or Dublin Gazette containing a certificate, or a copy of a certificate, purporting to be printed by the printers of the London, Edinburgh, or

Dublin Gazette, shall be conclusive evidence of the certificate, and of the due publication thereof, without any proof of the Gazette, or without any proof of the copy having been in fact so printed, as the case may be.

61. The company or persons empowered by a certificate shall at all times keep at their head offices copies of the certificate printed by the printers of the Gazette, or one of the Gazettes in which the same was published, in such form as general rules under this act direct, to be sold to all persons desiring to buy the same, at a price not exceeding 1s. for each copy.

If any company or persons fail to comply with this provision they shall be liable to a penalty not exceeding 20l., and to a further penalty, not exceeding 5l. for every day during which such failure continues after the first penalty is incurred.

62. Penalties under this act, or under a certificate, the recovery and application whereof are not otherwise provided for, shall be recovered and applied as penalties under the Railways Clauses Acts are recoverable and applicable.

63. The act of the 7 Will. 4 & 1 Vict. (c. 83), "to compel clerks of the peace and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament," shall apply to documents required to be deposited by general rules under this act.

64. The general rules under this act shall, in the first instance, be those set forth in the schedule to this act; and the Board of Trade may from time to time, for the better execution of this act, make general rules adding to, altering, or revoking any general rules for the time being in force under this act; but any general rules so made by the Board of Trade shall not have effect unless, and until, they are laid before both Houses of Parliament; and if either House of Parliament, within six weeks after the same are laid before that House, thinks fit to resolve that the same, or any part thereof, ought not to take effect, the same, or that part thereof (as the case may be), shall not take effect; otherwise all rules made by the Board of Trade under the present section shall be of the same force and effect as if they had been comprised in the schedule to this act.

All general rules which are to take effect under the present section shall be published in the London, Edinburgh, and Dublin Gazettes.

65. Not later than the 1st July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this act during the year then last past.

THE SCHEDULE REFERRED TO IN THE FOREGOING ACT.

(i).—Notice of Opposition.

In the Matter of the Railways Construction Facilities Act, 1864, and the (proposed) — Railway.

We, the — Railway [or Canal] Company hereby declare and give notice, that we desire to be heard by counsel, agents, and witnesses against the above-mentioned proposed undertaking.

Dated this — day of —, 18—.

Witness, A. B.

— (L. S.)

(ii).—Form of Certificate of Board of Trade.

The — Railway.

Certificate of the Board of Trade for the Construction of the Railway.

Whereas the promoters of the — Railway have contracted for the purchase of the lands required for the railway and the works connected therewith, and have complied with the requirements of the Railways Construction Facilities Act, 1864:

Now, therefore, the Board of Trade do, by this their certificate, in pursuance of the said act, and by virtue and in exercise of the powers thereby in them vested, and of every other power enabling them in this behalf, certify as follows:

[Here are to follow the provisions of the certificate shewing the powers conferred and the terms and conditions (if any) imposed.]

(Signed) C. D.,

Secretary to the Board of Trade.

The Board of Trade, Whitehall.

Dated this — day of —.

(iii). Tolls and Charges.

TABLE I.

Maximum Charges for Use of Railway and Supply of Carriages, Waggons, or Trucks.

	For Use of Railway, per Mile.	For Supply of Carriage, Waggon, or Truck, by the Proprietors of the Railway, the additional Sum per Mile of
Passengers:—		
For every person	Twopence.	One penny.
Animals:—		
For every horse, ass, mule, or other beast of draught or burthen (Class 1). ..	Threepence.	One penny.
For every ox, cow, bull, or head of neat cattle (Class 2).	Twopence.	One penny.
For every calf, pig, sheep, lamb, and other small animal (Class 3).	Three farthings.	One farthing.
Goods (except as provided for in Table IV):—		
For cotton and other wools, manufactured goods, drugs, fish, and all other wares, merchandise, articles, matters, or things not enumerated in any other class (Class 4). .. per ton	Threepence.	One penny.
For sugar, grain, corn, flour, hides, dyewoods, earthenware, timber, staves, deals, and metals (except iron), nails, anvils, vices, chains, and light iron castings (Class 5). .. per ton	Twopence halfpenny.	One penny.
For coke, charcoal, pig iron, bar iron, rod iron, sheet iron, hoop iron, plates of iron, wrought iron, heavy iron castings, railway chains, slabs, billets, and rolled iron, lime, bricks, tiles, slates, salt, fireclay, and stone (Class 6). per ton	Three halfpence.	One penny.
For dung, compost, manure, undressed material for repair of public roads or highways, coals, culm, cinders, cannel, ironstone, iron ore, limetone, clay (except fireclay), chalk, sand, and alag (Class 7). .. per ton	Five farthings.	One halfpenny.
For every carriage, of whatever description, conveyed on a truck or platform belonging to the proprietors of the railway (Class 8):		
If not weighing more than one ton	Sixpence.	
If weighing more than one ton, then for the first ton	Sixpence.	
And for every additional quarter of a ton, or fractional part of a quarter of a ton, above the first ton	Three halfpence.	

TABLE II.

Maximum Charges for Supply of Locomotive Power.

For the use of engines for propelling carriages on the railway, for every passenger, animal, and ton of goods, per mile, one penny.

TABLE III.

Maximum total Charges for Use of Railway and Supply of Carriages, Waggon, or Trucks, and Supply of Locomotive Power, and every other Expense incidental to Conveyance of Passengers, Animals, or Goods along the Railway.

Passengers, per mile:—

For every person conveyed in a first-class carriage, threepence.

For every person conveyed in a second-class carriage, twopence.

For every person conveyed in a third-class carriage, five farthings.

Animals:—

For every animal in Class 1, fourpence.

For every animal in Class 2, threepence.

For every animal in Class 3, three halfpence.

Goods, per ton:—

For everything in Class 4, fourpence.

For everything in Class 5, threepence.

For everything in Class 6, twopence.

For everything in Class 7, three halfpence.

For every carriage in Class 8, the charge specified in Table I.

TABLE IV.

Maximum Charges for small Packages and single Articles of great Weight.

Small packages:—

For every parcel not exceeding 7lbs. in weight, sixpence.

For every parcel exceeding 7lbs., but not exceeding 14lbs., in weight, eightpence.

For every parcel exceeding 14lbs., but not exceeding 28lbs., in weight, one shilling.

For every parcel exceeding 28lbs., but not exceeding 56lbs., in weight, one shilling and threepence.

For every parcel exceeding 56lbs., but not exceeding 500lbs., in weight, for the first 56lbs., one shilling.

And for every additional 56lbs., or fractional part of 56lbs., above the first 56lbs., sixpence.

Single articles of great weight:—

For every boiler, cylinder, or single piece of machinery, timber or stone, or other single article:—

If weighing (inclusive of the carriage) more than four but not more than eight tons, sixpence per ton per mile.

If weighing (inclusive of the carriage) more than eight tons, such sum as the proprietors of the railway think fit.

REGULATIONS.

1. For passengers, animals, or goods conveyed on the railway for a distance less than that prescribed in the certificate as the short distance, and if none is prescribed then for a distance less than six miles, charges are to be payable as for the short distance prescribed, and if none is prescribed then as for six miles.

2. In respect of passengers, every fraction of a mile beyond an integral number of miles is to be deemed a mile.

3. In respect of animals and goods, for a fraction of a mile beyond the short distance prescribed, or if none is prescribed then beyond six miles or beyond any greater number of miles, charges are to be payable in proportion to the number of quarters of a mile contained in that fraction; and a fraction of a quarter of a mile is to be deemed a quarter of a mile.

4. For a fraction of a ton charges are to be payable according to the number of quarters of a ton in that fraction; and a fraction of a quarter of a ton is to be deemed a quarter of a ton.

5. Every passenger travelling on the railway may, without charge, cause to be carried in the same train with him his ordinary luggage, not exceeding the weight prescribed in the certificate, and if none is prescribed then not exceeding the weight of 120lbs. for a first-class passenger, 100lbs. for a second-class passenger, and 60lbs. for a third-class passenger.

6. The restriction as to charges for passengers does not extend to special trains when required by passengers, but applies only to the ordinary or express passenger or goods trains appointed by the proprietors of the railway.

7. Except as to stone and timber, weight is to be determined according to avoirdupois weight.

Fourteen cubic feet of stone, and forty cubic feet of oak, mahogany, teak, beech, or ash, and fifty cubic feet of any other timber, are to be deemed one ton, and so in proportion for any smaller quantity.

8. In addition to the charges in Table III, a reasonable charge is to be payable for the loading, covering, and unloading of goods at any station, being a terminal station in respect of such goods, and for delivery and collection, and any other services incidental to the duty or business of a carrier, where such services, or any of them, are or is performed by the proprietors of the railway.

A station is not to be considered a terminal station in respect of goods, unless they are received there direct from the consignor, or are directed to be delivered there to the consignee.

9. The term "small packages" does not include articles sent in large aggregate quantities, although made up of separate parcels, such as bags of sugar, coffee, meal, and the like; but applies only to single parcels in separate packages.

10. Nothing herein or in the certificate contained is to prevent the proprietors of the railway from taking any charge over and above the charges hereinbefore limited for the conveyance of goods of any description by agreement with the owners of or any persons in charge of such goods, either in respect of the conveyance thereof (except small packages) by passenger trains, or by reason of any other special service performed by the proprietors of the railway in relation thereto.

(iv). *Enactments in General Acts relating to Railways applied to Railways under this Act.*

<i>Session and Chapter, and Section (if any).</i>	<i>Title or Short Title of Act.</i>
1 & 2 Vict. c. 80..	An act for the payment of constables for keeping the peace near public works.
1 & 2 Vict. c. 98..	An act to provide for the conveyance of the mails by railways.
2 & 3 Vict. c. 45..	An act to amend an act of the 5 & 6 Will. 4, relating to highways.
3 & 4 Vict. c. 97..	An act for regulating railways.
5 & 6 Vict. c. 55..	An act for the better regulation of railways and for the conveyance of troops.
5 & 6 Vict. c. 79, ss. 2 to 7 (both inclusive), and ss. 24, 25, 26.	An act to repeal the duties payable on stage carriages, and on passengers conveyed upon railways, and certain other stamp duties in Great Britain, and to grant other duties in lieu thereof; and also to amend the laws relating to stamp duties.
7 & 8 Vict. c. 85..	An act to attach certain conditions to the construction of future railways authorised or to be authorised by any act of the present or succeeding sessions of Parliament, and for other purposes relating to railways.
8 & 9 Vict. c. 3 ..	An act for the appointment of constables or other officers for keeping the peace near public works in Scotland.
8 & 9 Vict. c. 46..	An act for the appointment of additional constables for keeping the peace near public works in Ireland.
9 & 10 Vict. c. 57, ss. 4, 6, 7, 8.	An act for regulating the gauge of railways.
10 & 11 Vict. c. 85, s. 16.	An act for giving further facilities for the transmission of letters by post, and for the regulating the duties of postage thereon, and for other purposes relating to the Post Office.
14 & 15 Vict. c. 64	An act to repeal the act for constituting commissioners of railways.
17 & 18 Vict. c. 31	The Railway and Canal Traffic Act, 1854.

<i>Session and Chapter, and Section (if any).</i>	<i>Title or Short Title of Act.</i>
18 & 19 Vict. c. 122, s. 6.	An act to amend the laws relating to the construction of buildings in the metropolis and its neighbourhood.
20 & 21 Vict. c. 31, s. 4.	An act to amend and explain the Inclosure Acts.
21 & 22 Vict. c. 75	An act to amend the laws relating to cheap trains, and to restrain the exercise of certain powers by canal companies, being also railway companies.
22 & 23 Vict. c. 59	Railway Companies Arbitration Act, 1859.
26 & 27 Vict. c. 33, ss. 13, 14.	An act for granting to her Majesty certain duties of Inland Revenue, and to amend the laws relating to the Inland Revenue.
26 & 27 Vict. c. 112, s. 32.	The Telegraph Act, 1863.

(v).—*General Rules.*

Form of Application.

1. The application to the Board of Trade for a certificate is to be made by a memorial in writing, signed by the promoters, or some or one of them, and lodged at the office of the Board of Trade.

2. Together with the memorial the promoters are to lodge—

(a). A printed draft of the certificate as proposed by the promoters:

(b). An estimate of the expense of the construction of the proposed new railway or work (if any), signed by the person making the estimate.

Plans, Sections, &c.

3. Maps, plans, sections, and books of reference deposited by the promoters are to be such, in respect of scale and contents and otherwise, as, under the Standing Orders of either House of Parliament for the time being in force, they would be obliged to deposit if they were proceeding in the same case by a railway bill.

4. The maps, plans, sections, and books of reference aforesaid are to be deposited at the office of the Board of Trade at the time when the memorial is lodged there.

5. They are also to be deposited for public inspection at the same offices of the clerks of the peace or sheriff clerks, at which, under the Standing Orders aforesaid, the promoters would be obliged to deposit them if they were proceeding in the same case by a railway bill.

6. Where any part of the railway will be situate within the limits of the metropolis, as defined by the Metropolis Management Act, 1855, a copy of so much of the plans and sections as relates to that part is to be deposited at the office of the Metropolitan Board of Works.

7. A copy of so much of the plans and sections as relates to each parish in which any part of the railway will be situate, or in which any lands intended to be taken for the railway are situate, together with a copy of so much of the book of reference as relates to that parish, is to be deposited for public inspection with the officer or person with whom, under the Standing Orders aforesaid, the promoters would be obliged to deposit the same if they were proceeding in the same case by a railway bill.

Advertisements as to Application.

8. After all the deposits aforesaid have been made, notice of the application to the Board of Trade is to be given by advertisement published as follows; namely,

Where the railway will be situate wholly in one county, city, or town, or county of a city or town, then once in each of three successive weeks in some one and the same newspaper of that county, city, or town, or county of a city or town:

Where the railway will not be situate wholly in one county, city, or town, or county of a city or town, then once in each of three successive weeks in some one and the same newspaper of the county, city, or town, or county of a city or town, wherein the head office of the promoters is situate, and also once in each of three successive weeks in some one and the same newspaper

of each county, city, or town, or county of a city or town, wherein any part of the railway will be situate: If in any case there is not any such newspaper as hereinafore described, then in like manner in a newspaper of some adjoining or neighbouring county:

In every case, once at least in the London, Edinburgh, or Dublin Gazette, respectively, if the railway will be situate wholly in England or Scotland, or in Ireland, and both in the London and in the Edinburgh Gazette, if the railway will be situate partly in England and partly in Scotland.

9. The advertisements are to be published either in the month of June or in the month of November, and not at any other time.

10. Each advertisement is to give the address of an office in London where copies of the draft certificate will be supplied as hereinafter directed.

11. Each advertisement is to state that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection, respecting the application, may do so by letter addressed to the secretary of the Board of Trade, on or before the 1st August or 1st January next succeeding the date of the advertisement, according as the same is published in the month of June or in the month of November.

Deposit of Copies of Advertisements.

12. Within one week after the publication of the latest advertisement, a copy of each of the newspapers and Gazettes containing the several advertisements is to be lodged at the office of the Board of Trade.

13. Within the same time, a printed copy of the Gazette advertisement is to be deposited for public inspection in each of the same offices, and with each of the same officers and persons, in which or with whom the maps, plans, sections, and books of reference or parts thereof were deposited.

14. The last-mentioned deposit of a copy of the Gazette advertisement may be made (if the promoters choose) by means of a registered post letter, and any deposit so made shall be deemed made on the day on which such letter would be delivered in ordinary course of post.

Note of Time of Deposit.

15. Where any document is deposited under these rules for public inspection, the clerk of the peace, sheriff clerk, or other officer or person, in whose office or with whom it is deposited, is to make thereon a memorial in writing denoting the time at which it was deposited.

Notice to Road Trustees.

16. Where any part of a turnpike road or public highway is intended to be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway, the promoters in the month of June or November (as the case may be), in which the advertisements are published, are to serve notice of the application on the trustees or other persons having the management of such road or highway.

Notice of Opposition.

17. Notice of opposition by railway or canal company is to be lodged at the office of the Board of Trade not later than the 1st August or 1st January next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

Notice of Settlement of Draft Certificate.

18. On the draft certificate being settled by the Board of Trade, the promoters are to serve a copy thereof, with a notice that the draft has been settled by the Board of Trade, on every company, body, or person, by whom any representation or objection respecting the application was made to, or brought before, the Board of Trade, and are also to give, by advertisement or otherwise, such public or other notice (if any) thereof, as, according to the circumstances of the case, the Board of Trade direct.

Supply of Copies of Draft Certificate.

19. From the time of the publication of the first advertisement the promoters are to keep in the office mentioned in this behalf in the advertisement, a sufficient number of copies of the draft of the certificate as proposed by them, and are to furnish there copies to all persons applying for them at the price of not more than 6d. each.

20. From the time of the settlement of the draft certificate by the Board of Trade, the promoters are to keep in the office aforesaid copies of the draft supplied to them for that purpose by the Board of Trade, and are to furnish there copies thereof to all persons applying for them at such price (if any) as the Board of Trade from time to time direct.

Deposit of Money.

21. The deposit of money or Government securities in

court is to be made within one month after notice from the Board of Trade that they are prepared to issue the certificate.

Printing of Certificate.

22. Copies of the certificate, printed by the printers of a Gazette, are to be printed on ordinary white folio paper, similar in size to the paper on which the public general acts of Parliament are printed for public sale.

LOCAL AND PERSONAL ACTS,

DECLARED PUBLIC, AND TO BE JUDICIALLY NOTICED.

27 & 28 VICTORIA.—SESSION 1864.

CAP. i.

An Act to confer certain Powers on the Llanelly Railway and Dock Company with respect to their Capital.

CAP. ii.

An Act to enable the Dock Company at Kingston-upon-Hull to raise a further Sum of Money.

CAP. iii.

An Act for granting further Powers to the Newry and Greenore Railway Company.

CAP. iv.

An Act to enable the Metropolitan Board of Works to provide a public Park for the South-eastern Districts of the Metropolis, to be called Southwark Park.

CAP. v.

An Act to amend the existing Acts of the Folkestone Waterworks Company, and to confer further Powers upon the Company.

CAP. vi.

An Act for better supplying Matlock Bath, in the County of Derby, with Water.

CAP. vii.

An Act for altering the Marple New Mills and Hayfield Junction Railway; extending the Time for Completion of Portions thereof; and for other Purposes.

CAP. viii.

An Act to empower the Southwark and Vauxhall Water Company to raise further Money; and for other Purposes.

CAP. ix.

An Act for granting certain Powers to the Chertsey Gas Consumers Company (Limited).

CAP. x.

An Act for granting further Powers to the Kingston-upon-Thames Gas Company.

CAP. xi.

An Act to incorporate the Tunbridge Wells Gas Company; to extend their Limits for supplying Gas; to repeal the Deeds of Settlement under which the Company is established; to authorise the raising of further Capital; and for other Purposes.

CAP. xii.

An Act to alter and regulate the Capital and Borrowing Powers of the Dublin and Belfast Junction Railway Company; and for other Purposes.

CAP. xiii.

An Act to enable the Carmarthen and Cardigan Railway Company to make a Branch Railway near Kidwelly, in Carmarthenshire.

CAP. xiv.

An Act to authorise the Dover Gas-light Company to purchase certain Land; to raise more Money; and for other Purposes.

CAP. xv.

An Act to amend the Metropolitan Meat and Poultry Market Act, 1860, and other Acts, with respect to the borrowing of Money; and for other Purposes.

CAP. xvi.

An Act for granting further Powers to the Calne Railway Company.

CAP. xvii.

An Act to enable the Ipswich Gas-light Company to increase their Capital.

CAP. xviii.

An Act to enable the Swansea Vale Railway Company to raise a further Sum of Money.

CAP. xix.

An Act to enable the South Yorkshire Railway and River Dun Company to extend their Railway to the Midland Railway at Barnsley.

CAP. xx.

An Act to enable the North-eastern Railway Company to construct a Branch Railway and Works between Church Fenton and Micklefield, in the County of York; to raise additional Capital; and for other Purposes.

CAP. xxi.

An Act to amend the Salisbury Railway and Market House Act, 1856; and to enable the Company thereby incorporated to increase their Capital; and for other Purposes.

CAP. xxii.

An Act to extend the Time limited for the Purchase of certain Lands by Acts relating to the Llanidloes and Newtown Railway Company; and to authorise that Company to raise and apply Money to the general Purposes of their Undertaking; and for other Purposes.

CAP. xxiii.

An Act for incorporating and granting other Powers to the Salisbury Gas-light and Coke Company.

CAP. xxiv.

An Act for repairing and maintaining the Sudden Bridge and Bury Roads in the County Palatine of Lancaster; and for other Purposes.

CAP. xxv.

An Act to enable the Haslingden and Rawtenstall Waterworks Company to raise a further Sum of Money, and to construct Works; and for other Purposes.

CAP. xxvi.

An Act to enable the Great North of Scotland Railway Company to contribute further Monies to certain Undertakings.

CAP. xxvii.

An Act for enabling the Huntingdon and Godmanchester Gas and Coke Company (Limited) to acquire additional Land.

CAP. xxviii.

An Act to enable the Dublin and Meath Railway Company to raise a further Sum of Money; and for other Purposes.

CAP. xxix.

An Act to authorise the Edgware, Highgate, and London Railway Company to extend their Railway to the Alexandra Park; and for other Purposes.

CAP. xxx.

An Act for lighting with Gas the Townships of Clayton, Allerton, and Thornton, and certain neighbouring Townships or Parts thereof in the West Riding in the County of York.

CAP. xxxi.

An Act for amalgamating the Undertakings of the Commercial Dock Company and of the Grand Surrey Docks and Canal Company; for consolidating and amending their Acts; and for other Purposes.

CAP. xxxii.

An Act to confer Powers on the Lancashire and Yorkshire Railway Company for the Execution of new Works and the Acquisition of additional Lands, and otherwise in relation to their Undertaking; and for other Purposes.

CAP. xxxiii.

An Act to make Provision for equalising the Revenue and Expenditure of the Aberbrothwick Harbour Trust; to enable the Trustees to borrow a further Sum of Money; and for other Purposes relating to the said Harbour.

CAP. xxxiv.

An Act to enable the Anglesey Central Railway Company to make a Deviation of a Portion of their authorised Line.

CAP. xxxv.

An Act to enable the London, Brighton, and South-coast Railway Company to provide Station Accommodation at Kemp Town, Brighton, and to construct a new Railway in connexion therewith; and for other Purposes.

CAP. xxxvi.

An Act to incorporate the Pontypridd Waterworks Company (Limited), and to make further Provision for the Supply of Water to the Town of Pontypridd and the Neighbourhood thereof.

CAP. xxxvii.

An Act to extend the Term and amend the Provisions of the Act relating to the Thornset Turnpike Roads.

CAP. xxxviii.

An Act to re-incorporate the Bedford Gas-light Company, and make further Provision for lighting the Borough of Bedford, in the County of Bedford, and certain neighbouring Parishes with Gas.

CAP. xxxix.

An Act for authorising the Governor and Company of Chelsea Waterworks to raise further Moneys; and for other Purposes.

CAP. xl.

An Act to incorporate the Stroud Gas-light and Coke Company, and make further Provision for lighting the Borough of Stroud and Parish of Eastington with Gas; and for other Purposes.

CAP. xli.

An Act to enable the Swansea Harbour Trustees to construct additional Works, and to raise a further Sum of Money for the Purposes of their Undertaking; and for other Purposes.

CAP. xlii.

An Act for better supplying the Town of Drogheda and Neighbourhood thereof with Water; and for other Purposes.

CAP. xliii.

An Act to repeal "An Act for repairing the Road from the present Turnpike Road in the Parish of Hursley, in the County of Southampton, to Andover, and from thence to Newbury, and from Newbury to Chilton Pond, in the County of Berks," and for granting more effectual Powers in lieu thereof.

CAP. xliv.

An Act for the making and maintaining a Bridge over the River Thames or Isis, near the Ferry at Clifton Hampden, in the County of Oxford, with Approaches thereto; and for other Purposes.

CAP. xlv.

An Act to incorporate the Deal and Walmer Gas-light and Coke Company (Limited), and to make further Provision for lighting the Town of Deal and Parish of Walmer and certain neighbouring Places with Gas.

CAP. xlv.

An Act for extending the Powers of the Chichester Harbour Embankment Act, 1850.

CAP. xlvii.

An Act to enable the Corporations of the Boroughs of Ashton-under-Lyne and Stalybridge to provide a further Supply of Water for those Boroughs and the Neighbourhood thereof respectively; and for other Purposes.

CAP. xlviii.

An Act for authorising the Improvement of the Harbour of Porth Cawl; to confirm Arrangements relative thereto between the Llynvi Valley Railway Company and the Ogmore Valley Railways Company; and for other Purposes.

CAP. xlix.

An Act to enable the North-eastern Railway Company to construct Railways between their Main Line near York and the Great Northern Railway near Doncaster; to raise additional Capital; and for other Purposes.

CAP. l.

An Act for continuing the Term of and otherwise amending the Act relating to the Pucklechurch or Lower District of Roads, in the Counties of Gloucester and Wilts.

CAP. li.

An Act for extending the Time for the Purchase of Lands and the Completion of the Works authorised by the Greenwich and South-eastern Docks Act, 1859.

CAP. lii.

An Act to continue the Hedon and Patrington Turnpike Trust in the East Riding of the County of York; and for other Purposes.

CAP. liii.

An Act to repeal the Acts relating to the Newport (Monmouthshire) Turnpike Trust and the Caerleon Turnpike Trust, and to amalgamate those Trusts; and for other Purposes.

CAP. liv.

An Act for the Portmadoc and Beaver Pool Bridge Turnpike Roads, in the Counties of Merioneth and Carnarvon.

CAP. lv.

An Act to give Effect to the Provisions of the West Yorkshire Railway Act, 1863, with reference to the Admission of the North-eastern and Lancashire and Yorkshire Railway Companies to become joint Owners with the West Yorkshire Railway Company of the Methley Railway; and for other Purposes.

CAP. lvi.

An Act for incorporating the Hertford Gas-light Company, for extending their Limits for supplying Gas; for the Increase and Regulation of their Capital; and for other Purposes.

CAP. lvii.

An Act to amend the London Necropolis and National Mausoleum Amendment Act, 1855; and for other Purposes.

CAP. lviii.

An Act for authorising the Cowes and Newport Railway Company to make and maintain Extension and Branch Railways in the Isle of Wight, and to raise Funds for the Purpose; and for other Purposes.

CAP. lix.

An Act to extend the Term and amend the Provisions of the Act relating to the Turnpike Road from Brough Ferry to South Newbald Holmes, and from Brough to Welton, in the East Riding of the County of York.

CAP. lx.

An Act to enable the Caledonian Railway Company to make a Branch Railway from their Rutherglen and Coatbridge Branch to Tennochside, in the County of Lanark; and for other Purposes.

CAP. lxi.

An Act to authorise the Corporation of the City of London to form a Viaduct or raised Way across the Holborn Valley, and new Streets and Improvements connected therewith; and for other Purposes.

CAP. lxii.

An Act to authorise Arrangements between the Bedford and Cambridge and London and North-western Railway Companies; and for other Purposes.

CAP. lxi.

An Act to authorise the Stirling Waterworks Commissioners to make and maintain additional Reservoirs and other Works, and to extend the Supply of Water; and for other Purposes.

CAP. lxiv.

An Act for incorporating the Salop Fire Office, and for other Purposes relating thereto.

CAP. lxv.

An Act to enable the Trent, Ancholme, and Grimsby Railway Company to raise further Money.

CAP. lxvi.

An Act to confer upon the Westminster Palace Hotel Company, Limited, further Powers with respect to Arrangements between them and Her Majesty's Principal Secretary of State in Council of India; and for other Purposes connected with their Undertaking.

CAP. lxvii.

An Act to enable the North-eastern Railway Company to make Branch Railways and other Works in the Counties of Durham and Cumberland; to raise additional Capital; and for other Purposes.

CAP. lxviii.

An Act to incorporate the Scarborough Valley Bridge Company; to authorise the Construction of a Bridge over the Ramsdale Valley in Scarborough, with Approaches; and for other Purposes.

CAP. lxix.

An Act for making further Provision with respect to the Investment of Monies of the Rock Life Assurance Company; and for other Purposes.

CAP. lxx.

An Act for more effectually repairing certain Roads from Scaddow Gate, in the Parish of Ticknall, to the Burton-upon-Trent and Ashby Road, and other Roads connected therewith, and for making new Branches of Road, in the Counties of Derby and Leicester; and for other Purposes.

CAP. lxxi.

An Act to authorise Arrangements of the Capital of the North-western Railway Company.

CAP. lxxii.

An Act to authorise the Construction of new, and widening and altering of, existing Streets and other Improvements in the Borough of Liverpool; and for other Purposes.

CAP. lxxiii.

An Act for making further Provision with respect to the sanitary Condition of the Borough of Liverpool; and for other Purposes.

CAP. lxxiv.

An Act for continuing the Term of the Turnpike Road from Chesterfield to Hernstone Lane Head, with its Branches, all in the County of Derby; and for other Purposes.

CAP. lxxv.

An Act to incorporate a Company for making the Chichester and Midhurst Railway.

CAP. lxxvi.

An Act for making a Railway from the Northampton and Banbury Junction Railway to the Great Western Railway at Stratford-on-Avon.

CAP. lxxvii.

An Act to authorise the Transfer of the Undertaking of the South Yorkshire Railway and River Dun Company to the Manchester, Sheffield, and Lincolnshire Railway Company.

CAP. lxxviii.

An Act to grant to the Manchester, Sheffield, and Lincolnshire Railway Company certain Powers with respect to the Stockport and Woodley Junction, Cheshire Midland, Stockport, Timperley, and Altrincham Junction, and West Cheshire Railways, and to empower the Company to enlarge its Canal Premises in Manchester; and for other Purposes.

CAP. lxxix.

An Act to enable the Tendring Hundred Railway Company to alter their Line to Walton in Essex; and for other Purposes.

CAP. lxxx.

An Act for making a Railway from the Lancashire and Yorkshire Railway at Chatburn to the North-western Railway at Settle, to be called "The Ribblesdale Railway;" and for other Purposes.

CAP. lxxxi.

An Act to amalgamate the Alva Railway Company with the Edinburgh and Glasgow Railway Company.

CAP. lxxxii.

An Act for vesting the Alyth Railway, by way of Lease, in the Scottish North-eastern Railway Company; to enable the Alyth Railway Company to raise additional Capital and for other Purposes.

CAP. lxxxiii.

An Act to enable the Perth, Almond Valley, and Methven Railway Company to raise additional Capital, and to sell their Undertaking to the Scottish North-eastern Railway Company, and to enable that Company to purchase the same; and for other Purposes.

CAP. lxxxiv.

An Act to authorise the North British Railway Company to make a Railway from the Carlisle and Silloth Bay Railway, in the Parish of Holme Cultram, to the Maryport and Carlisle Railway, in the Parish of Wigton, all in the County of Cumberland; and for other Purposes.

CAP. lxxxv.

An Act for better supplying the Borough of Wrexham and Neighbourhood thereof with Water; and for other Purposes.

CAP. lxxxvi.

An Act to authorise the Construction of a Railway from Ely, through Haddenham, to Sutton, in Cambridgeshire.

CAP. lxxxvii.

An Act for authorising the London and South-western Railway Company to make and maintain a Railway from the London and South-western Railway at Chertsey to the Staines and Wokingham Railway at Egham; and for other Purposes.

CAP. lxxxviii.

An Act to empower the Salisbury and Yeovil Railway Company to acquire additional Lands, and to raise more Money; and for other Purposes.

CAP. lxxxix.

An Act to enable the South Staffordshire Waterworks Company to construct additional Works, and obtain a further Supply of Water, and to extend their Supply of Water into other Districts; and for other Purposes.

CAP. xc.

An Act for making a Railway from the Lynn and Hunstanton Railway at Heacham to the Great Eastern Railway at Wells, to be called "The West Norfolk Junction Railway," all in the County of Norfolk.

CAP. xci.

An Act to enable the West Riding and Grimsby Railway Company to make a Station at Wakefield; and for other Purposes with relation to that Company.

CAP. xcii.

An Act for incorporating the Ulverston Gas-light and Coke Company, and for conferring upon them further Powers for the Supply of Gas to the Township of Ulverston, and certain neighbouring Townships and Parishes, in the County of Lancaster.

CAP. xciii.

An Act to empower the Kent Coast Railway Company to acquire additional Lands, and to raise more Money, and to make further Provision for the Lease of their Undertaking to the London, Chatham, and Dover Railway Company; and for other Purposes.

CAP. xciv.

An Act to empower the Crystal Palace and South London Junction Railway Company to make a Railway to connect their authorised Railway with the Greenwich Line of the London, Chatham, and Dover Railway Company, and to let or transfer their Undertaking to the London, Chatham, and Dover Railway Company; and for other Purposes.

CAP. xcv.

An Act to authorise the Great Eastern Railway Company to make a Railway from their Loughton Line to near High-beech Green, in Epping Forest.

CAP. xcvi.

An Act to authorise the London, Chatham, and Dover Railway Company to run Steam Vessels between Ramsgate and certain Foreign Ports, and to provide Accommodation for Steam-boat Traffic at Ramsgate and Dover; and for incidental Purposes.

CAP. xcvi.

An Act for authorising the Oswestry, Ellesmere, and Whit-church Railway Company to raise a further Sum of Money.

CAP. xcvi.

An Act for authorising the South-eastern Railway Company to make and maintain an Extension of their Railway to Westerham, and to raise further Monies; and for other Purposes.

CAP. xcix.

An Act for authorising the South-eastern Railway Company to make and maintain Extensions of their Railway to Cranbrook, Hythe, and Sandgate respectively, and to raise further Monies; and for other Purposes.

CAP. c.

An Act to sanction an Agreement between the North British Railway Company and the Scottish Central Railway Company with respect to the General Station at Perth; and for other Purposes.

CAP. ci.

An Act to enable the Witney Railway Company to raise a further Sum of Money; and for other Purposes.

CAP. cii.

An Act for repairing the Road from North Shields, in the County of Northumberland, to the Town of Newcastle-upon-Tyne; and for other Purposes.

CAP. ciii.

An Act to incorporate a Company for holding Markets and Fairs in the Town and Parish of Wellington, in the County of Salop; and for other Purposes.

CAP. civ.

An Act to grant a further Term in the Road from or near Mytholm Royd Bridge, in the West Riding of the County of York, communicating with the Road at or near to the Sixth Milestone from Rochdale, in the County of Lancaster, and further Powers for the Management thereof; to alter the Rights of the existing Creditors of the Trust, and to repeal the existing Act; and for other Purposes.

CAP. cv.

An Act to amend the Act 3 Viet. c. 44, for regulating and preserving the Harbour of Workington, in the County of Cumberland, in relation to the Securities to be granted for borrowed Money; and for other Purposes.

CAP. cvi.

An Act to enable the Belfast and Northern Counties Railway Company to make a Railway or Tramway at Portrush; and to purchase additional Lands; and to extend the Period at present limited for the Sale of certain superfluous Lands of the said Company; and for other Purposes.

CAP. cvii.

An Act to incorporate the Proprietors of the North Cheshire Waterworks Company, Limited, and to confer on them further Powers for the Supply of Water; and for other Purposes.

CAP. cviii.

An Act for enabling the Local Board of Health for the Borough of Lancaster to construct and maintain an improved System of Waterworks for the Supply of the Borough and of adjacent Places with Water; to authorise certain Street Improvements in the Borough of Lancaster; and to give Powers of Sale or Mortgage over Lancaster Marsh; and for other Purposes.

CAP. cix.

An Act to grant further Powers to the Nottingham Gas-light and Coke Company.

CAP. cx.

An Act to enable the Stockton and Middlesbrough Water-works Company to extend their Limits for the Supply of Water; to construct additional Works; to raise additional Capital; to alter and amend their existing Act; and for other Purposes.

CAP. cxii.

An Act to authorise the Scottish North-eastern Railway Company to construct a Railway to connect their Railway with the Great North of Scotland Railway at Aberdeen; to confer Powers and Obligations on them, and on the Great North of Scotland Railway Company; and for other Purposes.

CAP. cxiii.

An Act to authorise the Construction of a Dock, Piers, a Railway, and other Works at or near Deal, and a navigable Channel therefrom to Sandwich, all in the County of Kent; and for other Purposes.

CAP. cxiii.

An Act for authorising the North and South-western Junction Railway Company to acquire additional Lands for the Purposes of their Undertaking; and to raise further Monies; and for other Purposes.

CAP. cxiv.

An Act for authorising the Okehampton Railway Company to make certain Deviations from their authorised Lines; and for other Purposes.

CAP. cxv.

An Act to enable the Scottish North-eastern Railway Company to make a new Railway from Newtyle to the Meikle Station on the Scottish North-eastern Railway; and for other Purposes.

CAP. cxvi.

An Act to confirm an Agreement for the Amalgamation of the Globe Insurance Company with the Liverpool and London Fire and Life Insurance Company, and to alter the Name of the last-mentioned Company; and for other Purposes.

CAP. cxvii.

An Act to confer further Powers on the Wallasey Local Board; and for other Purposes.

CAP. cxviii.

An Act for vesting, by way of Lease in perpetuity, the New-castle-under-Lyme Canal, and the Canal Extension Railway belonging thereto, in the North Staffordshire Railway Company; and for other Purposes.

CAP. cxix.

An Act for erecting and maintaining Bridges over the River Severn, near Shrewsbury, and for making convenient Approaches thereto.

CAP. cxx.

An Act for incorporating the Lymington Harbour and Docks Company, and authorising them to make and maintain the Lymington Harbour and Docks, and a Railway and other Works in connexion therewith; and for other Purposes.

CAP. cxxi.

An Act for better supplying with Water the Town of Whitehaven and its Neighbourhood; and for other Purposes.

CAP. cxxii.

An Act to authorise the making of a Railway from the Great Eastern Railway to North Walsham, in the County of Norfolk; and for other Purposes.

CAP. cxxiii.

An Act to enable the London, Brighton, and South-coast Railway Company to make new Railways from the Ouse Viaduct on their Main Line to Uckfield and Hailsham; and for other Purposes.

CAP. cxxiv.

An Act to enable the Great Northern Railway Company to use certain Portions of the Great Eastern Railway, and to make Arrangements with the Great Eastern Railway Company.

CAP. cxxv.

An Act to amend the Railway Passengers Insurance Company's Act, 1852, and to confer additional Powers upon the said Company.

CAP. cxxvi.

An Act for authorising a Deviation and Extensions of the Dublin, Wicklow, and Wexford Railway; and for other Purposes.

CAP. cxxvii.

An Act for authorising the Falmouth Docks Company to make and maintain additional Works, and to raise further Monies; and for other Purposes.

CAP. cxxviii.

An Act to enable the West Shropshire Mineral Railway Company to make certain New Lines of Railway, and to use a Portion of the Oswestry and Newtown Railway and the Llanymynech Station of that Railway; and for other Purposes.

CAP. cxxix.

An Act to authorise the Consolidation of the separate Capitals of the Sevenoaks, Maidstone, and Tunbridge Railway Company; to extend the existing Arrangements between them and the London, Chatham, and Dover Railway Company; to authorise the Sale or Lease of their Undertaking to that Company; and for other Purposes.

CAP. cxxx.

An Act for enabling the Pneumatic Dispatch Company (Limited) to purchase Lands and extend their Works.

CAP. cxxxi.

An Act for empowering the Commissioners of the Harbour of Tralee to raise Money; and for other Purposes.

CAP. cxxxii.

An Act to enable the Glasgow and South-western and the Caledonian Railway Companies to make certain Branches and other Works, and to acquire additional Lands in connexion with their Joint Line of Railway between Glasgow and Paisley; and for other Purposes.

CAP. cxxxiii.

An Act for maintaining the public Roads and Bridges in the Stewartry of Kirkcudbright.

CAP. cxxxiv.

An Act to extend the Time for completing the Henley-in-Arden Railway, and to raise additional Capital.

CAP. cxxxv.

An Act to enable the Metropolitan Board of Works to purchase additional Lands, and to make further Improvements in the Parish of Saint Mary, Lambeth, in the County of Surrey, for the Purposes of the Thames Embankment Act, 1863.

CAP. cxxxvi.

An Act to extend the Time for the Purchase of Land and completing the Extension Line of the River Avon of the Bristol and South Wales Union Railway; to authorise the Purchase of additional Lands; and for other Purposes.

CAP. cxxxvii.

An Act for extending the Limits of the Bolton Gas Company's Act, 1854; and for other Purposes.

CAP. cxxxviii.

An Act for the Amendment of the Bolton and Saint Helen's Turnpike Roads Act, 1860.

CAP. cxxxix.

An Act to make Provision for the Maintenance and Management of public Roads in Zetland.

CAP. cxi.

An Act to consolidate and amend the Acts relating to the Harbour of Port Glasgow.

CAP. cxli.

An Act for making and maintaining a Market in the Parish of St. George the Martyr, Southwark, in the County of Surrey.

CAP. cxlii.

An Act to enable the Mid Wales Railway Company to make a Railway to join the Central Wales Extension Railway in the Parish of Llanelwedd, in the County of Radnor; and to confer upon the said Company further Powers with respect to Roads crossed by their Railway, and with respect to the Purchase of Lands; and to enable the said Company to let their Railway on Lease; and to raise further Sums; and for other Purposes.

CAP. cxliii.

An Act for authorising the Construction of a Railway, to be called "The Halifax and Ovenden Junction Railway;" and for other Purposes.

CAP. cxliv.

An Act to authorise the Mistleley, Thorpe, and Walton Railway Company to make a Railway to connect their Line with an authorised Extension of the Tendring Hundred Railway Company; and for other Purposes.

CAP. cxlv.

An Act for making further Provision with respect to the Liverpool Exchange Buildings and the Exchange Area; and for authorising the Liverpool Exchange Company to raise further Monies; and for other Purposes.

CAP. cxlvi.

An Act for the Amalgamation of the North Kent Waterworks Company, and their Undertaking and Property, with the Kent Waterworks Company, and their Undertaking and Property, and for the Dissolution of the North Kent Waterworks Company; and for authorising the Kent Waterworks Company to raise further Monies; and for other Purposes.

CAP. cxlvii.

An Act for authorising the Aberystwith and Welsh Coast Railway Company to acquire additional Lands, and to raise further Monies; and for authorising the Oswestry and Newtown Railway Company to contribute further Monies towards the Funds of that Company; and for other Purposes.

CAP. cxlviii.

An Act to re-incorporate the Newcastle-upon-Tyne and Gateshead Union Gas-light Company, and to make better provision for lighting with Gas the Boroughs of Newcastle-upon-Tyne and Gateshead, and several neighbouring Parishes and Townships in the Counties of Northumberland and Durham; and for other Purposes.

CAP. cxlix.

An Act for incorporating a Company for making a Railway in the County of Lancaster, to be called "The Garstang and Knot End Railway;" and for other Purposes.

CAP. cl.

An Act to authorise the Globe Telegraph Company (Limited) to construct and maintain Telegraphs; to acquire and work Letters-patent relating to Electro-magnetic Telegraphs and Apparatus; and for other Purposes.

CAP. cli.

An Act to authorise the Severn Valley Railway Company to raise further sums of Money, and to make certain Works in connexion with their Railway; and for other Purposes.

CAP. clii.

An Act to enable the Nantwich and Market Drayton Railway Company to increase their Capital; and for other Purposes.

CAP. cliii.

An Act for the Purification of the Water of Leith, by Interception, and Conveyance into the Sea, of the Sewage falling into the same, and otherwise; and for other Purposes.

CAP. cliv.

An Act to authorise the London, Brighton, and South-coast Railway Company to run Steam Vessels between Littlehampton, Places on the Coast of France, and in the Channel Islands.

CAP. clv.

An Act for enlarging the Powers of the Weston-super-Mare Pier Act, 1862; and for other Purposes.

CAP. clvi.

An Act to change the Name of the West Shropshire Mineral Railway Company, and to enable them to make Branch Railways and a Deviation, and to alter the Line and Levels of their Railway; and to confer upon the said Company further Powers for making, crossing, and altering public Roads, and for the Purchase of additional Lands; and for other Purposes.

CAP. clvii.

An Act to amend the Acts relating to the East Indian Railway Company, and to authorise the Company to raise further Capital; and for other Purposes connected with their Undertaking.

CAP. clviii.

An Act for making a Railway from the Caledonian Railway, near Kirtlebridge Station, to the Maryport and Carlisle Railway, near Brayton Station, with Branch Railways in connexion therewith, in the Counties of Dumfries and Cumberland; and for other Purposes.

CAP. clix.

An Act to amend the Act relating to the Phoenix Gas Company, and to authorise such Company to raise more Capital, and purchase a certain Piece of Land; and for other Purposes.

CAP. clx.

An Act to make further Provision for the Maintenance and Repair of the Wallasey Embankment; and for other Purposes.

CAP. clxi.

An Act to authorise the Oswestry and Newtown Railway Company to subscribe to the Bishop's Castle Railway; and for other Purposes.

CAP. clxii.

An Act to enable the Independent Gas-light and Coke Company to raise additional Capital; to define their Limits for supplying Gas; to repeal, amend, and extend the Act relating to the Company; and for other Purposes.

CAP. clxiii.

An Act for making a Railway from the Cornwall Railway, near Burngullow, to the St. Dennis Branch of the New-quay Railway, near Hendra, in the County of Cornwall; and for other Purposes.

CAP. clxiv.

An Act for the Construction by the Midland Railway Company of new Railways from their Bristol and Birmingham Line to the City of Bath and to Thornbury; and for other Purposes.

CAP. clxv.

An Act for enabling the Leeds, Bradford, and Halifax Junction Railway Company to construct new Works and acquire additional Lands in the West Riding of the County of York; and for other Purposes.

CAP. clxvi.

An Act for authorising the London and South-western Railway Company to make and maintain a Line of Railway from Kensington to Richmond, and Junction Lines communicating with the Hammersmith and City Railway and the North and South-western Junction Railway respectively; and to raise further Monies; and for authorising Arrangements with divers Railway Companies; and for other Purposes.

CAP. clxvii.

An Act for rendering valid Letters-patent granted to Thomas Webster Rammell for Improvements in Pneumatic Railways and Tubes.

CAP. clxviii.

An Act to provide for the Discharge by Deputy in certain Cases of the Functions of Warden in the University of Durham; and to authorise the Abolition of certain Fellowships in the said University; and to provide a further Endowment for the School of Theology, and a proposed School of Physical Science, in the said University; and for other Purposes.

CAP. clxix.

An Act for supplying and lighting with Gas and supplying with Water the Town of Barrow-in-Furness, and the Townships of Above Town, Ireleth, Lindal, and Martin, Dalton, Dalton Proper, Yarlside, Hawcoat, and St. George's Barrow, in the Parish of Dalton-in-Furness, in the County Palatine of Lancaster; and for other Purposes.

CAP. clxx.

An Act for making a Railway from the Cornwall Railway to Bodmin.

CAP. clxxi.

An Act to authorise the Worcester, Bromyard, and Leominster Railway Company to purchase additional Lands; to extend the Time limited for the Purchase of Lands and for completing the Railway; and for other Purposes.

CAP. clxxii.

An Act to enable the London, Brighton, and South-coast Railway Company to provide improved Railway Communication between Tunbridge Wells and Eastbourne; and for other Purposes.

CAP. clxxiii.

An Act to enable the Scottish North-eastern Railway Company to construct a new Line between Dundee and Forfar; to levy Tolls; to raise additional Capital; and for other Purposes.

CAP. clxxiv.

An Act for authorising an Alteration of the Southampton and Netley Railway, and the Amalgamation of the Southampton and Netley Railway with the London and South-western Railway; and for other Purposes.

CAP. clxxv.

An Act to incorporate a Company for the making of Railways in the Counties of Carmarthen and Cardigan, to be called "The Swansea and Aberystwith Junction Railway."

CAP. clxxvi.

An Act to enable the Wellington and Drayton Railway Company to divert a Portion of their authorised Railway, and to transfer their Undertaking to the Great Western Railway Company.

CAP. clxxvii.

An Act for enabling the Hayling Railways Company to make and maintain Railways in Extension of their authorised Railways, and to make and maintain Docks, and to raise Monies for the Purpose, and to make Arrangements with other Companies; and for other Purposes.

CAP. clxxviii.

An Act for the Amalgamation of the London Dock Company and the St. Katharine Dock Company into One Company by the Name "The London and St. Katharine Docks Company," and for the Transfer to that Company and the Amalgamation with their Undertaking and Docks of the Undertaking and Docks of the Victoria (London) Dock Company; and for other Purposes.

CAP. clxxix.

An Act for the Stockport and Ashton Turnpike Roads, in the Counties Palatine of Chester and Lancaster, and the County of York.

CAP. clxxx.

An Act for better supplying with Water the Borough of Wisbech, and certain Parishes and Places in the Counties of Cambridge and Norfolk; and for other Purposes.

CAP. clxxxi.

An Act for authorising the making of Railways from the Railway of the Somerset and Dorset Railway Company at Wells to the Railway of the Bristol and Exeter Railway Company at Yatton, and Arrangements between those Companies in relation thereto; and for other Purposes.

CAP. clxxxii.

An Act for making Railways from the Great Eastern Railway at East Dereham to Norwich, to be called "The Wensum Valley Railway;" and for other Purposes.

CAP. clxxxiii.

An Act to enable the Pembroke and Tenby Railway Company to construct new Lines of Railway; and for other Purposes.

CAP. clxxxiv.

An Act for the Sale to the Bristol and Exeter Railway Company of the Undertaking of the Company of Proprietors of the Grand Western Canal, and for the Abandonment of a Portion of the Canal; and for other Purposes.

CAP. clxxxv.

An Act to enable the Newry and Armagh Railway Company to raise further Capital; and for other Purposes.

CAP. clxxxvi.

An Act to authorise the Construction of a Railway from Carnarvon to Llanberis, in the County of Carnarvon.

CAP. clxxxvii.

An Act for the Construction of an Embankment, Docks, and other Works, and the Reclamation and Acquisition of Lands near Fleetwood, in the County Palatine of Lancaster; and for other Purposes.

CAP. cxxxxviii.

An Act for making a Railway from the Merthyr, Tredegar, and Abergavenny Railway to Crickhowell; and for other Purposes.

CAP. cxxxxix.

An Act for making a Railway from the Town of Crieff to the Perth, Almond Valley, and Methven Railway, near Methven; and for other Purposes.

CAP. cxc.

An Act to authorise the Construction of a Railway in Middlesex, to be called "The Midland and South-western Junction Railway."

CAP. xcxi.

An Act for the Extension of the Municipal Limits of the City of Londonderry, and for the Increase of the Jurisdiction of the Court of Conscience there; and for the further Improvement of the City; and for raising further Moneys; and for other Purposes.

CAP. xcxd.

An Act for authorising the Charing Cross Railway Company to acquire additional Lands at or near to their Canon Street Station in the City of London, and to raise further Monies; and for other Purposes.

CAP. xcxf.

An Act for more effectually maintaining, keeping in repair, and improving the Roads, Highways, and Bridges within the County of Peebles; and for other Purposes.

CAP. xcxi.

An Act for affording increased Facilities for the Transmission of Traffic between the Railways of the London and North-western Railway Company and Railways in Ireland; and for other Purposes.

CAP. xcxcv.

An Act to authorise the London, Chatham, and Dover Railway Company to construct additional Works and acquire additional Lands; to alter the Works and Powers (connected with or affecting their Undertaking) of other Companies, Bodies, and Persons; and to amend the Acts relating to the above-named Company, to Dover and to Margate; and for other Purposes.

CAP. xcxcvi.

An Act to authorise the Shrewsbury and Welshpool Railway Company to transfer or lease their Undertaking to the London and North-western Railway Company, or to the London and North-western and Great Western Railway Companies.

CAP. xcxcvii.

An Act for making a Railway from Helston to Penryn, in the County of Cornwall; and for other Purposes.

CAP. xcxcviii.

An Act for giving Effect to an Award relating to the Borough of Belfast, and for confirming Things done with a View to the Execution of the Acts for the Improvement of the Borough; and for other Purposes.

CAP. xcxcix.

An Act to enable the Kington and Eardisley Railway Company to extend their authorised Line of Railway to Presteign, and to use a Portion of the Leominster and Kington Railway, and make Agreements with other Companies; and for other Purposes.

CAP. cc.

An Act for making a Railway from the Great Western Railway near Harbury, to the London and North-western Railway, near Birdingbury, in the County of Warwick.

CAP. cci.

An Act to enable the Mayor, Aldermen, and Burgesses of the Borough of Bolton to construct additional Waterworks; to acquire the Turton and Entwisle Reservoir; to provide a public Park and Town Hall; and for other Purposes.

CAP. ccii.

An Act to enable the Great Northern Railway Company to extend their Railway to the Town of Barnet; to improve their Station at King's Cross; and for other Purposes.

CAP. cciii.

An Act to further amend and extend the Acts for the Improvement of the Navigation of the Rivers Barry, Loughor, and Lledl, in the Counties of Carmarthen and Glamorgan, and for the Improvement of the Harbour of Llanelli, in the said County of Carmarthen; and to grant certain Powers to the Llanelli Railway and Dock Company and the South Wales Railway Company in relation to the Improvement of the said Harbour; and for other Purposes.

CAP. cciv.

An Act for incorporating a Company, and for making and maintaining the Macclesfield, Bollington, and Marple Railway; and for other Purposes.

CAP. ccv.

An Act to authorise the Construction of a Railway from the Watford and Rickmansworth Railway at Watford to the Edgware, Highgate, and London Railway at Edgware.

CAP. ccvi.

An Act for making and maintaining Highways, Bridges, Quays, and Ferries; and for regulating Ferries in the Shire of Argyll.

CAP. ccvii.

An Act for making a Railway from the Staines, Wokingham, and Woking Railway to Cambridge Town, in the County of Surrey; and for other Purposes.

CAP. ccviii.

An Act to consolidate and amend the Acts relating to the Harbour of Ardrossan, and to provide for the Improvement of the said Harbour.

CAP. ccix.

An Act to enable the Whitby Waterworks Company (limited) to supply with Water the Town and Borough of Whitby, and the Neighbourhood thereof, in the Parish of Whitby, in the North Riding of the County of York; and for other Purposes.

CAP. ccx.

An Act to extend the Bourton-on-the-Water Railway towards Cheltenham; to amend the Act relating to the Bourton-on-the-Water Railway Company; and for other Purposes.

CAP. ccxi.

An Act for enabling the Isle of Wight Ferry Company to raise additional Capital; and for other Purposes.

CAP. ccxii.

An Act to form into a separate Undertaking Part of the City Lines of the London, Chatham, and Dover Railway Company, and to provide for a Contribution thereto by the Great Northern Railway Company, and to consolidate some of the Stocks and Shares of the first-named Company; and for other Purposes.

CAP. ccxiii.

An Act to enable the Mersey Docks and Harbour Board to raise a further Sum of Money for the Purpose of increasing the Accommodation of the Dock Estate on the Liverpool Side of the River Mersey, and to make a Diversion of Derby and Victoria Roads; and for altering certain Rates; and for other Purposes.

CAP. ccxiv.

An Act to improve and extend the Dundee and Newtyle Railway; and for other Purposes.

CAP. ccxv.

An Act for authorising the Extension and Maintenance of Tramways in the Parish of Erith, in the County of Kent; and for other Purposes.

CAP. ccxvi.

An Act to authorise the Construction of a Railway and Branch Railway, to be called "The Waterford and Wexford Railway," and of a Harbour in Greenore Bay; and for other Purposes.

CAP. ccxvii.

An Act to enable the Aylesbury and Buckingham Railway Company to raise a further Sum of Money; and for other Purposes.

CAP. ccxviii.

An Act to extend the Powers of the Llanelli Railway and Dock Company.

CAP. ccxix.

An Act to authorise the London and Blackwall Railway Company to enlarge certain of their Stations and Works; and for other Purposes.

CAP. ccxx.

An Act to authorise the Stamford and Essendine Railway Company to make a Railway from their Railway to join the Northampton and Peterborough Branch of the London and North-western Railway; and for other Purposes.

CAP. ccxxi.

An Act for authorising the Tottenham and Hampstead Junction Railway Company to make a Railway to join the Midland Railway; and for other Purposes.

CAP. ccxxii.

An Act for making a Railway from Christian Malford, in the County of Wilts, to Nailsworth, in the County of Gloucester; and for other Purposes.

CAP. ccxxiii.

An Act for authorising the Somerset and Dorset Railway Company to acquire additional Lands for the Purposes of their Undertaking, and to raise further Moneys; and for other Purposes.

CAP. ccxxiv.

An Act to incorporate a Company for making the Carmarthenshire Railway, and to confer other Powers with reference thereto.

CAP. ccxxv.

An Act to authorise the Corris, Machynlleth, and River Dovey Tramroad Company to make a new Railway; to abandon Part of their existing Undertaking; to amend their Act; and for other Purposes.

CAP. ccxxvi.

An Act for conferring additional Powers on the London and North-western Railway Company for the Construction of Works, and otherwise in relation to their own Undertaking and the Undertakings of other Companies; for authorising the Abandonment of certain Railways; and for other Purposes.

CAP. ccxxvii.

An Act for the Amalgamation of divers Railway Companies with the London and South-western Railway Company; for authorising that Company to make and maintain additional Lines of Railway, and to raise further Moneys; and for other Purposes.

CAP. ccxxviii.

An Act to enable the Londonderry and Lough Swilly Railway Company to extend their Railway towards the City of Londonderry; to raise additional Capital; and for other Purposes.

CAP. ccxxix.

An Act to regulate the Use by the Lynn and Sutton Bridge Railway Company of the Cross Keys Bridge over the River Nene.

CAP. ccxxx.

An Act for enabling the Midland Railway Company to construct a Railway from Chesterfield to Sheffield; and for other Purposes.

CAP. ccxxxi.

An Act for enabling the Midland Railway Company to construct a Branch Railway in the Parish of St. Pancras; for authorising Arrangements with the Metropolitan Railway Company; and for other Purposes.

CAP. ccxxxii.

An Act for making a Railway from the Potteries Line of the North Staffordshire Railway to near Tunstall, in the Parish of Wolstanton, in the County of Stafford; and for other Purposes.

CAP. ccxxxiii.

An Act to authorise the Construction of a Railway from Hartley and Cranbrook to Tenterden, in the County of Kent; and for other Purposes.

CAP. ccxxxiv.

An Act for the Extension of the Wrexham, Mold, and Connaught's Quay Railway to Whitchurch and Brymbo; and for other Purposes.

CAP. ccxxxv.

An Act to incorporate a Company for making a new Bridge from Chelsea to Battersea, with Approaches thereto.

CAP. ccxxxvi.

An Act for the Amalgamation of the Waterford and Limerick Railway Company and the Limerick and Foynes Railway Company, and for authorising the Waterford and Limerick Railway Company to work the Undertaking of the Rathkeale and Newcastle Junction Railway Company; and for other Purposes.

CAP. ccxxxvii.

An Act for authorising the West London Docks and Warehouses Company to execute further Works, and to make Arrangements with other Companies; to raise further Moneys; and for other Purposes.

CAP. ccxxxviii.

An Act for incorporating the Wandsworth Bridge Company, and for authorising them to make and maintain the Wandsworth Bridge, and to make Roads leading thereto; and for other Purposes.

CAP. ccxxxix.

An Act to enlarge the Powers of the Birmingham and Staffordshire Gas-light Company; and for other Purposes.

CAP. ccxl.

An Act for authorising the Peterborough, Wisbeach, and Sutton Railway Company to extend their Line of Railway; and for other Purposes.

CAP. ccxli.

An Act to authorise the Construction of a Dock and other Works near the Mouth of the River Avon, to be called "The Bristol Port and Channel Dock;" and for other Purposes.

CAP. ccxlii.

An Act to enable the Great Northern Railway Company to extend their Railway from Lincoln to Sleaford; and to authorise the Amalgamation of the Boston, Sleaford, and Midland Counties Railway, and the Bourn and Essendine Railway, with the Great Northern Railway.

CAP. ccxliii.

An Act to enable the Great Northern Railway Company to complete their Loop Line between Doncaster and Gainsborough; and to improve the Gradients of their Railway South of Gainsborough.

CAP. ccxliv.

An Act to enable the Blyth and Tyne Railway Company to raise further Sums of Money; to extend the Time limited in respect of certain of their authorized Branches; and for other Purposes.

CAP. ccxlv.

An Act for enabling the Midland Railway Company to construct new Railways and Works, and to acquire additional Lands; and for other Purposes.

CAP. ccxli.

An Act to empower the North London Railway Company to construct additional Works at Poplar; and for other Purposes.

CAP. ccxlvii.

An Act for making a Railway from the Dartmouth and Torbay Railway at Brixham Road Station to Brixham, in the County of Devon, and a Tramway in connexion therewith; and for other Purposes.

CAP. ccxlviii.

An Act to enable the Trustees of the Clyde Navigation to lay down Lines of Rails or Tramways upon, and in connexion with, the Quays at the Harbour of Glasgow, and to borrow additional Money; to alter certain of the Rates leviable by them; and for other Purposes.

CAP. ccxlix.

An Act for better supplying with Water Exmouth, Budleigh Salterton, and the adjoining Districts within the Parishes of Littleham and Exmouth, Withycombe Raleigh, and East Budleigh, in the County of Devon.

CAP. ccl.

An Act to authorise the Amalgamation of the Hamilton and Strathaven Railway Company with the Caledonian Railway Company; and for other Purposes.

CAP. ccli.

An Act for the Incorporation of the West Grinstead, Cuckfield, and Hayward's Heath Junction Railway Company, and the making and maintaining of the West Grinstead, Cuckfield, and Hayward's Heath Junction Railway; and for other Purposes.

CAP. cccli.

An Act to enable the Great Northern and Western (of Ireland) Railway Company to raise a further Sum of Money.

CAP. ccclii.

An Act for the Discharge of Debts of the Irish North-western Railway Company, and for authorising divers Arrangements between that Company and other Railway Companies; and for other Purposes.

CAP. cccliv.

An Act to incorporate a Company for making Railways to connect the several Railways in the Town of Belfast, and to construct a Central Station in Belfast; and for other Purposes.

CAP. ccclv.

An Act for incorporating the Milwall Canal Company, and for authorising them to make and maintain Canals and other Works in the Isle of Dogs, and thereby, and by the Appropriation of Works and Lands there, to provide Accommodation for Shipping, and Waterside Accommodation for Shipbuilding, and other Businesses requiring Water Frontage; and for other Purposes.

CAP. ccclvi.

An Act for authorising the Construction of Docks and other Works upon or near Hubberton Pill at Milford Haven, in the County of Pembroke; and for other Purposes.

CAP. ccclvii.

An Act for making Extension or Connecting Lines of Railway in the City of Bristol; and for other Purposes.

CAP. ccclviii.

An Act for incorporating a Company for making a Railway in the County of Devon, to be called "The Buckfastleigh, Totnes, and South Devon Railway;" and for other Purposes.

CAP. ccclix.

An Act for better lighting with Gas Parts of the Parishes of Walthamstow and Leyton, in the County of Essex, and for conferring further Powers in relation thereto on the County and General Gas Consumers Company (Limited); and for other Purposes.

CAP. ccclx.

An Act for enabling the Metropolitan Railway Company to make additional Works; for extending the Time limited for the compulsory Purchase of Lands and Completion of certain Works; for authorising the raising of additional Capital; and for other Purposes.

CAP. ccclxi.

An Act for better lighting with Gas Parts of the Parishes of Northfleet, Stone, and Swanscombe, in the County of Kent, and for conferring further Powers in relation thereto on the County and General Gas Consumers Company (Limited); and for other Purposes.

CAP. ccclxii.

An Act to amalgamate the Oswestry and Newtown, Llanidloes and Newtown, Newtown and Machynlleth, and Oswestry, Ellesmere, and Whitchurch Railway Companies, and to confer Powers upon the amalgamated and other Companies.

CAP. ccclxiii.

An Act to authorise Agreements between the Oswestry and Newtown, the Llanidloes and Newtown, the Oswestry, Ellesmere, and Whitchurch, the Newtown and Machynlleth, the Hereford, Hay, and Brecon, the Brecon and Merthyr Tydfil, and the London and North-western Railway Companies; and for other Purposes.

CAP. ccclxiv.

An Act for authorising the Rhymney Railway Company to make and maintain their Cardiff and Caerphilly and other Railways; and for other Purposes.

CAP. ccclxv.

An Act to authorise certain Deviations from the existing and authorised Lines of the Brecon and Merthyr Tydfil Junction Railway Company, and to empower that Company to form a Junction with the Limestone Railway of the Rhymney Iron Company, and (instead of the Vale of Neath Railway Company) to exercise the Powers of the Vale of Neath Railway Act, 1863, for constructing the Merthyr Curve; and to raise further Moneys; and for other Purposes.

CAP. ccclxvi.

An Act for making a Railway from the Great Western Railway to Watlington, in the County of Oxford.

CAP. ccclxvii.

An Act for constructing a Pier at New Brighton, in the County of Chester.

CAP. ccclxviii.

An Act for the Commutation of Tithes in certain Parishes in the City of London; and for other Purposes.

CAP. ccclxix.

An Act for making a Railway from the Cornwall Railway to Redruth, in the County of Cornwall; and for other Purposes.

CAP. ccclxx.

An Act to enable the Lancashire and Yorkshire Railway Company to construct Railways between Blackburn, Chorley, Horwich, and Wigan.

CAP. ccclxxi.

An Act for sanctioning an Agreement between the Caledonian and Edinburgh and Glasgow Railway Companies with respect to the Construction of Branch Railways to connect their Undertakings with Glasgow Harbour; and for authorising the Formation of a Joint Station there; and for other Purposes.

CAP. ccclxxii.

An Act for the Incorporation of the Ilfracombe Railway Company, and the making and maintaining of the Ilfracombe Railway; and for other Purposes.

CAP. ccclxxiii.

An Act for the Construction of Railways in the County of Lancaster, to be called "The Lancashire Union Railways;" and for other Purposes.

CAP. ccclxxiv.

An Act to authorise the London, Brighton, and South-coast Railway Company to make certain Lines of Railway and other Works in and near the Parish of Battersea, in the County of Surrey; and for other Purposes.

CAP. ccclxxv.

An Act for authorising the Rhymney Railway Company to make and maintain Lines of Railway to join the Brecon and Merthyr Tydfil Junction Railway and the Merthyr, Tredegar, and Abergavenny Railway, respectively; and for other Purposes.

CAP. ccclxxvi.

An Act to authorise the Rickmansworth, Amersham, and Chesham Railway Company to make and maintain a level Crossing on their Railway at Rickmansworth; and for other Purposes.

CAP. ccclxxvii.

An Act for extending the Limits within which the Stockport District Waterworks Company may supply Water, and for authorising them to raise further Moneys; and for other Purposes.

CAP. ccclxxviii.

An Act for making a Railway from the Mid-Sussex Railway, in the Parish of Hardham, to the Shoreham, Steyning, and Henfield Railway, near the Town of Steyning; and for other Purposes.

CAP. cclxxxix.

An Act to empower the Edinburgh and Glasgow Railway Company to make Railways at Cowairs, and between Maryhill and the River Clyde; to authorise the Construction of a Tramway at the Harbour of Glasgow; and for other Purposes.

CAP. cclxxx.

An Act for the Incorporation of the Herne Bay, Hampton, and Reculver Oyster Fishery Company; and for authorising them to establish and maintain an Oyster Fishery in the Estuary of the River Thames, and to make and maintain a Pier and a Tramway and other Works; and for other Purposes.

CAP. cclxxxli.

An Act to authorise the Construction of Railways from Dublin to Rathmines, Rathgar, Roundtown, Rathfarnham, and Rathcoole; and for other Purposes with relation to the said Railways.

CAP. cclxxxlii.

An Act to authorise the Great Eastern Railway Company to make several short Junction Railways for connecting different Railways in their System at various Points; and for other Purposes.

CAP. cclxxxliii.

An Act to authorise the Construction of a Railway from Alford to Mobleshorpe, in the County of Lincoln; and for other Purposes.

CAP. cclxxxiv.

An Act for making Railways in the Counties of Salop and Stafford, to be called "The Drayton Junction Railway;" and for other Purposes.

CAP. cclxxxv.

An Act to authorise the Construction of Railways from Cheltenham to Witney, in Oxfordshire, and to Faringdon, in Berkshire, to be called "The East Gloucestershire Railway."

CAP. cclxxxvi.

An Act for making and maintaining the City of Glasgow Union Railway; and for other Purposes.

CAP. cclxxxvii.

An Act for incorporating a Company, and for making and maintaining the Kingsbridge Railway; and for other Purposes.

CAP. cclxxxviii.

An Act for authorising a Lease of a Portion of the Undertaking of the Company of Proprietors of the Lancaster Canal Navigation to the Company of Proprietors of the Canal Navigation from Leeds to Liverpool, and of the Remainder thereof to the London and North-western Railway Company; and for other Purposes.

CAP. cclxxxix.

An Act for incorporating the Launceston, Bodmin, and Wadebridge Junction Railway Company, and authorising them to make and maintain the Launceston, Bodmin, and Wadebridge Junction Railway; and for authorising Arrangements between that Company and the Okehampton Railway Company; and for other Purposes.

CAP. ccxc.

An Act to authorise the Construction of a Railway in the Borough of Liverpool, to be called "The Liverpool Central Station Railway;" and for other Purposes.

CAP. ccxci.

An Act to enable the Metropolitan Railway Company to extend their Railway to Notting Hill, Kensington, and Brompton.

CAP. ccxcii.

An Act for enabling the Scottish Central Railway Company to extend their Stations at Perth and Dundee, and to execute certain other Works in the Counties of Perth, Forfar, and Stirling; and for other Purposes.

CAP. ccxciii.

An Act to authorise the Construction of a Railway to connect the Swansea Vale and Neath and Brecon Railways.

CAP. ccxciv.

An Act for making a Railway from the River Tamar, in the Parish of Calstock, to Callington, in the County of Cornwall; and for other Purposes.

CAP. ccxcv.

An Act to enable the Worcester, Dean Forest, and Monmouth Railway Company to extend their Railway to the Great Western Railway, near Gloucester; and for other Purposes.

CAP. ccxcvi.

An Act for vesting the Undertaking of the Saint Helen's Canal and Railway Company in the London and North-western Railway Company.

CAP. ccxcvii.

An Act to enable the South Wales Mineral Railway Company to extend their Undertaking.

CAP. ccxcviii.

An Act for changing the Name of the Alton, Alresford, and Winchester Railway Company, and for authorising them to make and maintain Railways (the Mid-Hants Lines) in extension of their authorised Railways (the Alton Lines), and to raise Moneys for the Purpose, and to make Arrangements with other Companies; and for other Purposes.

CAP. ccxcix.

An Act to enable the Great Northern and Western (of Ireland) Railway Company to use a Portion of the Midland Great Western Railway (of Ireland), near Athlone, and to make Agreements with the Great Southern and Western Railway Company, and to issue a Portion of their Share Capital as Preference Shares; and for other Purposes.

CAP. ccc.

An Act to extend the Time for the Purchase of Lands for, and Completion of, the Kilpurcell Branch Railway of the Kilkenny Junction Railway Company, and to confer upon that Company Running Powers over the Waterford and Kilkenny Railway, and to enable them to raise further Moneys; and for other Purposes.

CAP. cccl.

An Act to authorise the Construction of a Railway from the Parsonstown and Portumna Bridge Railway to the Town of Portumna.

CAP. cccli.

An Act for authorising certain Arrangements between the Much Wenlock and Severn Junction Railway Company and Wenlock Railway Company and the Great Western Railway Company; and for extending the Time for the compulsory Purchase of Property required for the Wenlock Railway; and for other Purposes.

CAP. ccclii.

An Act to authorise the Construction of a Railway from the Metropolitan Railway through St. John's Wood to the Hampstead Junction Railway.

CAP. cccliv.

An Act to enable the Brecon and Merthyr Tydfil Junction Railway Company to construct new Lines between their authorised Lines and the Rhymney Railway, and to connect the Rumney and Rhymney Railways, and between the Rumney Railway and Caerphilly and Llantwit-fardre, and to join the Great Western Railway; and to raise further Moneys; and for other Purposes.

CAP. ccclv.

An Act to amend the Dublin Improvement Act, 1849, and the Dublin Improvement Act Amendment Act, 1861, and to confer additional Powers upon the Corporation of Dublin.

CAP. ccclvi.

An Act for conferring further Powers on the Great Western Railway Company for the Construction of Works and the Acquisition of Lands, and otherwise in relation to their own Undertaking and the Undertakings of other Companies and Persons; and for other Purposes.

CAP. ccclvii.

An Act for making a Railway from the Bristol and Exeter Railway to Barnstaple; and for other Purposes.

CAP. cccviii.

An Act to authorise the Construction of several Railways and a Canal, chiefly in the Parishes of Wolstanton and Audley, by the North Staffordshire Railway Company, and to confer other Powers upon such Company and various other Companies and the Duke of Bridgewater's Trustees.

CAP. cccix.

An Act to authorise the Construction of Railways from the Silverdale and Newcastle Railway at Wolstanton to the Old Manor House at Madeley, and thence to the Nantwich and Market Drayton and London and North-western Railways; and for other Purposes.

CAP. cccx.

An Act for making a Railway from Petersfield to Bishops Waltham; and for other Purposes.

CAP. cccxi.

An Act for the Amalgamation of the Mid-Kent Railway Company, and their Undertaking, Railway, and Property, with the South-eastern Railway Company, and their Undertaking, Railway, and Property; and for other Purposes.

CAP. cccxii.

An Act to authorise the Construction of Railways between Cannock Chase and Wolverhampton, in the County of Stafford; and for other Purposes.

CAP. cccxiii.

An Act to authorise the Great Eastern Railway Company to make several Railways in and near the Metropolis in connexion with their existing Railway, and to purchase Lands for a Station in the City of London.

CAP. cccxiv.

An Act to enable the London, Brighton, and South-coast Railway Company to make new Lines of Railway in the Counties of Surrey and Sussex; to acquire additional Lands; and to acquire the Undertakings of certain other Companies; and for other Purposes.

CAP. cccxv.

An Act to enable the Metropolitan Railway Company to extend their Railway from Finsbury Circus to Trinity Square, Tower Hill; and for other Purposes.

CAP. cccxvi.

An Act to enable the Neath and Brecon Railway Company to extend their Railway to the Central Wales Extension Railway, and to construct a Branch to the Banwen and Maes-marchog Collieries; and for other Purposes.

CAP. cccxvii.

An Act to enable the Portpatrick Railway Company to alter certain of their Works; to increase their Capital; to make working Arrangements with certain Companies; and to use Portions of other Undertakings.

CAP. cccxviii.

An Act to enable the Portpatrick Railway Company to establish Communication by Steam Vessels between Portpatrick and Donaghadee, and between Stranraer and Belfast and Larne.

CAP. cccxix.

An Act to authorise the Construction of Docks, and a Branch Railway and other Works, at Exmouth, in the County of Devon; and for other Purposes.

CAP. cccxx.

An Act to authorise the Manchester, Sheffield, and Lincolnshire Railway Company to run Steam and other Vessels between Great Grimsby and certain Foreign Ports.

CAP. cccxxi.

An Act for making Railways and Tramways in and near the City of Dublin.

CAP. cccxxii.

An Act for authorising the Completion of an Inner Circle of Railways North of the Thames.

CAP. cccxxiii.

An Act for making Railways from the Hampstead Road to the Charing Cross Railway at Hungerford, with a Branch to the London and North-western Railway; and for making new Streets from Tottenham Court Road to Chandos Street, Strand, and from the Strand to Duke Street; and for other Purposes.

CAP. cccxxiv.

An Act to make Provision for the Assessment of Damages claimed against the Sheffield Waterworks Company in consequence of an Inundation caused by the giving way of the Embankment of One of the Reservoirs of the Company; and to enable the Company, to raise further Money, and to increase their Water Rents; and for other Purposes.

CAP. cccxxv.

An Act for making and maintaining the Tooting, Merton, and Wimbledon Extension Railway; and for other Purposes.

CAP. cccxxvi.

An Act to authorise the Construction of a Pier at Aldborough, in the County of Suffolk, and of a Railway therefrom to the Great Eastern Railway at Aldborough, with a Branch Railway to Slaughden; and for other Purposes.

CAP. cccxxvii.

An Act for making a Railway from the authorised Line of Railway from Ryde to Lower Shanklin, near Yar Bridge, to Bembridge Point, with a Pier or Landing Place there, and a Tramway from the said intended Railway to Bembridge Down, all in the Parish of Brading, in the Isle of Wight; to authorise Arrangements with the Isle of Wight Railway Company; and for other Purposes.

CAP. cccxxviii.

An Act to authorise the Construction of Railways or Tramways from the Town of Holywell to Greenfield, in the County of Flint, and to the Holywell Station of the Chester and Holyhead Railway; and for other Purposes.

CAP. cccxxix.

An Act for making a Railway from the Great Southern and Western Railway in the Parish of Naas, in the County of Kildare, to the Town of Baltinglass, in the County of Wicklow; and for other Purposes.

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